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IN THE

United States Circuit Court of Appeals,

THIRD CIRCUIT.

No. **MARCH TERM, 1900.**

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTONY KOTERBA, DAVID STROHAKER, and ALLEN SHALE, citizens of the State of Ohio and G. L. SHALE, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE G. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, REGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania and THE UNION COMPANY, a corporation citizen of the State of Pennsylvania.

History of the Case.

The present proceeding was instituted for the purpose of having the remaining assets of an alleged defunct Society distributed among those entitled thereto, including the present plaintiffs. Complainants position.

The history of the Harmony Society is unique in the annals of sociology; while the legal questions now to be passed upon are, for the most part, novel in our jurisprudence. The State Court of Pennsylvania has reviewed one or two questions affecting the Society at a date prior to the alteration of the main Article of Association, and before

the State had passed laws prescribing the different methods of incorporation, &c., so that its construction of certain matters is inconclusive or does not cover the questions raised in this cause; the Federal Courts, so far as they have touched upon the validity and character of this organization, have, in the opinion of plaintiff's counsel, been adverse in their approval of such a scheme of government. This is the first time that the question of dissolution has been raised, or the manner in which the trust properties, constituting the assets of this Society, infringe upon the rule against perpetuities, or of the rights of heirs of deceased members to demand an accounting where the trust is illegal, or the same cannot be conserved and is ended. This and several new and equally important questions are raised in the present record for the first time.

The Society had its inception at the beginning of the present century; its membership gradually rising to upwards of six hundred, and as the century draws to a close, the present tribunal is called upon to determine the disposition of assets, amounting to and possibly in excess of two million of dollars, which it is alleged the prearranged survivors of the Society, eight or nine in number, have recently converted into a form, that, if legal, makes the "joint and indivisible" property as volatile as air and its ownership as mutable as negotiable paper.

Briefly the present complainants are the heirs of deceased intestate members dying in this Society since 1836, and rest their claims upon the fact that the alleged perpetual trust, whether legal or otherwise, no longer bars their participation in the property of this Society which their ancestors owned jointly with the other members of the Society at the time of their death; which property has been made "divisible" among the present defendants, and certain former members who have recently had apportioned them out of this "joint and indivisible" estate, money and real estate, amounting to many thousand dollars. The com-

plainants filed their Bill to prevent further liquidation in the final division of the assets among the present defendants.

Defendants' position.

The defendants admit that the present Complainants are the next of kin of certain deceased members of the Harmony Society; but allege in substance that the several Articles of Association have precluded the ancestors or their heirs and all others except living members from participation in the property of the Society; so that even if the progenitors of said plaintiffs were the joint owners of an indivisible estate, they passed their title, under the Articles of Association, to the survivors in the Society under the trust, and that at no time were or are the laws of inheritance enforcible in any form, whatever the wealth of the Society, in whatsoever form it existed, or whatever the relation of an heir to a deceased member; and further that the manner the present members have disposed of the real and personal property of the Society is legal, and the present Complainants have no legal or equitable claim thereto, or any right whatsoever to question the same. Upon these issues and the ones incident thereto, the present cause rests.

History of the Society.

For the convenience of the Court there is hereby appended a brief history of the Harmony Society, and its several Articles of Association, before presenting in detail the other material, admitted facts, and the issues of law and fact arising under the Complainant's assignments of error.

In the year 1803 George Rapp and his son John, and several of their friends, left the Kingdom of Wurtemberg, came to the United States, and located at a place called Harmony, in Butler County, Pennsylvania, where they were joined by a considerable number of other emigrants. They remained there until the year 1814, when they removed to Posey County, Indiana, where they remained until the year 1825, when becoming dissatisfied, they moved back to Pennsylvania, and located at Economy, in Beaver County, Pennsylvania, where they ever since have resided.

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They formed a society or an association called "The Harmony Society," and in 1805 they made the first written contract between them.

That said society was organized upon the principle of community of goods and land ownership. The members of the said society, who had brought with them from Wurtemberg money, combined their funds and held all their property in common, they living as members of a common household, and each member enjoying alike with every other the fruits of their common labor in equality and brotherhood. The occupation or business of said society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community. The members of said society obeyed said George Rapp as their spiritual and temporal leader and ruler. The only laws or rules governing said society were made by him, the members thereof having no voice in their enactment.

About the year 1807 the community promulgated the doctrine of celibacy as being necessary for the success of a communistic society.

Article of 1805.

The Article of 1805, "Exhibit A," pg. 47, vol. 1, Record, is as follows:

"Be it hereby known to all who need to know that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:

"ARTICLE 1. We, the subscribers, on our part, and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents

of the community, as if we had never had nor possessed it.

"ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

"ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us, for any of our labor or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

"ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and

maintenances as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

"ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers after a short or long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them, the value of his or their property brought in without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at or their departure.

"In confirmation whereof both parties have signed their names.

"Done in Harmony, February 15, 1805."

They became the owners of about seven thousand acres of land at Harmony, Butler County, which, on May 6th, 1815, was conveyed by Frederick Rapp, as their attorney in fact, to Abraham Ziegler, for the consideration of $100,000. And in that year, or in 1814, the society removed from Butler County, Pennsylvania, to Posey County, state of Indiana, where, in 1821, a second agreement with each other, in German, was entered into by them. A copy of the translation of which, not including the signature, is "Exhibit B," pg. 50, vol. 1, of Record.

This agreement and that of 1805, remained in the possession of the society until a short time prior to the filing of the bill in this case, when they were lost; but the copies attached to the answer were considered as offered in evidence, as correct copies of the agreements.

In 1825 the society removed from Indiana to Beaver County, Pennsylvania, where they purchased, and settled upon a tract of land containing about 3,000 acres, now known as "Economy," where they have since remained, and which has since become very valuable, and on which they have erected many buildings, including dwellings and factories of various kinds, and made many valuable improvements.

In 1827 the agreement, written in both English and German, on pages one to eleven of Exhibit No. 18 in evidence, was entered into by the then members of the association. The English version of this agreement is as follows, viz;

"*Whereas*, By the favor of Divine Providence, an association, or community, has been formed by George Rapp and many others, upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, as far as human imperfection may allow, to the fulfillment of the will of God, by the exercises of those affections, and the practice of those virtues which are essential to the happiness of man in time and throughout eternity: Article of 1827.

"*And whereas*, It is necessary to the good order and well-being of said association that the condition of membership should be clearly understood, and that the rights, and privileges, and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other.

"*Therefore*, Be it known to all to whom it may concern: That we, the undersigned, citizens of Beaver County, in the Commonwealth of Pennsylvania, do severally and dis-

tinctly, each for himself, covenant, grant, and agree to, and with the said George Rapp, and his associates, as follows, to wit:

"ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods, and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators, to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the Superintendents of the said community without delay.

"ARTICLE 2. We do further covenant and agree to and with the said George Rapp, and his associates, that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands, but also by that of our children or families and others who are or hereafter may be under our control.

"ARTICLE 3. If, contrary to our expectations, it should so happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause, to withdraw from the said association, then and in such case, we do expressly covenant and agree to and with the said George Rapp, and his associates, that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, and compen-

sation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

"ARTICLE 4. In consideration of the premises, the said George Rapp, and his associates, do by these presents, adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves, but also for their children and families, all such instructions in church and school as may be reasonably required, both for their temporal good and for their their eternal felicity.

"ARTICLE 5. The said George Rapp, and his associates, further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, &c., for themselves and their families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm, or otherwise unfit for labor, the same support and maintenance shall be allowed as before, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association, the father or mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

"ARTICLE 6. And if it should so happen as above mentioned, that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other other reason, should withdraw from the

association, then the said George Rapp, and his associates, agree to refund to him or them the value of all such property as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded without interest in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the community, notwithstanding, if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, in the judgment of the superintends of the association.

"In witness whereof and in testimony that the undersigned have become members of the same community, upon the conditions aforesaid, they have hereunto severally and each for himself set their hands and seals, on the ninth day of March, in the year our Lord one thousand eight hundred and twenty-seven."

(Signatures.)

This agreement, so written in English and German, was signed on March 9th, 1827, by 522 members of the association.

In 1836, another agreement, written in English and German, and dated October 31st, 1836, was executed by 391 members of the society, *revoking and annulling* the sixth article of the agreement of March 9th, 1827, which had provided for the refunding, to withdrawing members, the value, without interest, of the property or money contributed by them to the society, converting all of the property no matter how derived and all future acquisitions of all kinds into a joint and indivisible stock, and confirming and continuing the remainder of that agreement. A copy of this agreement is "Exhibit D," p. 57, Vol. 1, Record.

The English version of this agreement, not including the signatures, is as follows, viz:

"WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number is as follows, viz: Article of 1836.

"And if it would so happen as above mentioned, that any of the undersigned should violate his or their agreement, and would, or could not, submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest, in one, two or three annual instalments, as the said George Rapp and his associates shall determine."

"And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly they shall receive a donation in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require in the judgment of the superintendent of the association.

"AND WHEREAS, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association:

"AND WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, insomuch as the members of the association, in the year 1816, under a solemn conviction of the truth of what is above recited, did

destroy all record and memorial of the respective contributions up to that time:

"And Whereas, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith:

"Now Therefore, Be it known by these presents that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other as follows:

"1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

"2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed, or acquired, shall be deemed, now and forever, joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

"3rd. Should any individual withdraw from the society, or depart this life, neither he in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation.

"Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing in-

strument and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836.)

(Signatures.)

George Rapp, the founder of the society, continued until his death, in 1847, to be its head or superintendent and to rule and govern it. After his death another agreement, under seal, dated August 12, 1847, was executed in duplicate by the members of the society,—being Exhibit E, pg. 61, vol. 1, Record,—which was recorded in Beaver county in Deed Book 8, page 121. This agreement was signed by two hundred and eighty-eight members of the society. This agreement—not including the signatures—is as follows, viz:

Article of 1847.

"WHEREAS, By the decree of God, the venerable Patriach and much-beloved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of his Christian fellowship and religious ministry, and of his superintendence in their temporal affairs, and whereas in consequence of this deeply afflicting dispensation it has became necessary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote welfare and preserve and maintain it upon its original basis.

"THEREFORE, Be it known to all whom it may concern, that we, the undersigned surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly each for himself covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members, as follows: That is to say,

"ARTICLE 1ST. We do hereby solemnly recognize reestablish and continue the articles of our association (the sixth section excepted) entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz, and the supplement thereto,

adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William P. Baum, except so far as the same are affected by the death of the said George Rapp, as hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.

"ARTICLE 2ND. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schnabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, John Eberle, Romelius L. Baker, Jacob Henrici, Johnathan Lenz shall be the first board.

"ACTICLE 3RD. The Board of Elders shall have and exercise the following powers, to-wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society, to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the Society; to advise, and if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the Society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the

management of the external affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board. 9th. A record book shall be kept in which the Board of Elders shall enter all proceedings that they shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained and the affirmation of any elder shall be competent evidence of the identity of the said record.

"ARTICLE 4th. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinafter provided. Romelius L. Baker and Jacob Henrici shall be the first Board of Trustees.

"ARTICLE 5th. The said trustees shall jointly and severally have and exercise the powers following, to wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law,

and generally to transact all the external business affairs of the society. 2nd. To make donations to seceding and excluded members and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent and fit. 3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing an effectual and convenient remedy in law for all injuries to the property of the said society, real and personal, by tresspass, ouster, detention, conversion or otherwise. The said trustees are hereby invested with the rights of possession, entry and action in their own names as fully and to all intents and purposes, as do and may exist in the said society, and to effectuate this object more completely and in consideration thereof, we grant and transfer to the said trustees all such title and interest in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp. or in any other name or form whatsoever.

"ARTICLE 6th. It is hereby distinctly and absolutely declared and provided that all the property, real, personal or mixed, which now or hereafter shall be held or acquired by any trustee or trustees or person under them, is and shall be deemed the common property of the said society, and each trustee now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member there-

of, according to the articles of association hereby re-established and continued, and according to the present agreement.

"IN WITNESS WHEREOF, We, the undersigned members of the Harmony Society, who constitute the said association, have, to these articles executed in English and in German, hereunto set our hands and seals at Economy, in Beaver County, this 12th day of August, A. D., 1847.

(Signatures.)

(Certificate of Acknowledgment.)

The Article of 1836 is the only material article bearing upon the property rights of the plaintiffs; while the articles of 1805, 1821, 1827 and 1847 are material in considering the character of the trust, the purposes and principles of the Society, &c.

System of Government.

The above articles show that the Society was governed by a single patriarch until the death of Father Rapp in 1847, when a Board of Elders, with the same autocratic dominion, possessing absolutely the powers of self-perpetuation and the sole right to elect members into the Society, was introduced, thus continuing the patriarchal system as heretofore and down to the date when the present complainants allege the society was dissolved, or should be dissolved.

The society is an unincorporated association, holding lands, tenements, and personally in perpetuity; governed by an oligarchy, and founded upon a sytem of community of property, which under the article of 1836 all members were equal and joint owners thereof. This association was neither created or at any time in its history became, a religious, charitable or scientific association. From a community originally creating and depending upon the products of their own labor, the society later became, according to complainants construction of the evidence, a mere trading partnership, though still continuing to maintain the oligarchical management until the year 1894, when steps were taken that

apparently destroyed the government of the society as laid down in the articles of association, and made the few surviving members the joint owners of stock in a purely commercial enterprise, which will more fully appear in the history of the society following.

Gradual Changes.

After the society settled at Economy it built a large town; the property extended along the Ohio River for a distance of about three miles, and back a distance of, perhaps, a mile, comprising over three thousand acres of very rich soil and heavily timbered land. It is located about 18 miles below Pittsburgh on the eastern shore of the Ohio river, and today it is deemed the most valuable town site within fifty miles of Pittsburgh. Hundreds of wooden and brick residence were built; also warehouses, grainaries, barns, silk and woolen mills, saw-mills, flour mills, and numerous shops for manufacturing shoes, clothing and other necessities of life. Agriculture in its broadest sense largely occupied the members for many years; stock raising and dairy produce were also important items. Later on the profits of such joint labor were invested in valuable stocks and bonds; then the investments went into outside industrial enterprises, and gradually the trustees, whose powers, though defined, became absolute, in the sense that the form of government provided no practical curb on their operations, began entering into numerous business enterprises owned wholly by the society in Beaver County or adjoining counties, followed finally by becoming silent or active partners in numerous manufacturing concerns, railroads, cutlery works, coal companies, banks, &c., throughout Western Pennsylvania. The complainants believe that herein began the first radical departure of the society from its scheme of communism, based on the individual labor of its members. As the membership decreased the wealth multiplied, and so rapidly did the original members of the society die that in later years it became the custom of the society to replenish its decreasing

ranks by electing new members; this was absolutely necessary, as the society, being a celibate one, its ranks could only be maintained by calling in new members. The failure of the Board of Elders to elect new members, whatever the desires of the members not on the board, meant death to the society as a communistic association.

Radical Change

On January 1st, 1890, the Society had about the average number of members of the few preceding years. Jacob Henrici was Senior Trustee, having been elected in 1847; Jonathan Lenz was Junior Trustee, elected in 1867. Three members of the Board of Elders died in the beginning of January, 1890; among them Mr. Lenz, the Junior Trustee. These vacancies were not filled by a vote of the members of the Society, or were their successors elected from the members of the Society itself, but the remaining members of the Board of Elders, it is alleged, elected John S. Duss, Jacob Nicklaus and Herman Fishern, three employes of the Society who were on the pay roll up until the date of their selection. Mr. Duss' history and antecedents are referred to in the argument. The defendants alleged that these three persons were legally elected, becoming members of the Board of Elders and of the Society the same day. Such a proceeding had never occurred before. The Board of Elders, under the Article of 1847, had the sole right to elect members into the Society; but the evidence seemed to show that applicants for admission were expected to serve a year's probation before formally entering the Society. While it seems to be true that this self-perpetuating Board could elect to vacancies in the Board whom they pleased in the society, yet never before had they gone over the heads of the members to select outsiders for the Board. Moreover, the Complainants contend that Mr. Duss was never legally elected, irrespective of the violence done the customs of the society in the manner alleged, because the Board which is alleged to have elected him was not composed of six legal

members, the number required to make an election valid.

Three weeks later, on February 13th, 16 new members were elected, including Susie C. Duss, the wife of J. S. Duss. About July 1st, Ernest Wolful, a comparatively young man who had succeeded Lenz, a Junior Trustee, died suddenly Mr. Duss was elected by his colleagues to fill the vacancy. Shortly thereafter the said Duss and his wife, and two children, took up their residence in the Great House. This was the first time since the introduction of celibacy, in 1807, that a Trustee with a wife and children resided in the Great House and presided over the affairs of the society.

Teed Mission.

It was at this time that some members of the society became agitated over the frequent visitations of Dr. Cyrus Teed; he obtained large sums of money from the trustees, and gradually introduced many of his male and female followers into the town of Economy; some took up their residence in the Great House with Mr. Duss and the aged trustee Henrici, others sought employment in the town. A female disciple of Teeds, on one occasion, preached in the society's church, and Mr. Duss had to maintain order; a large and expensive house was built on the outskirts of the town, which some of the society's members say was intended for Teed's colony, though the master found it was erected for the laborers in the saw mill. Trustee Duss visited Teed's abode in Chicago, on one occasion leaving there a female member of his own household. Whatever the meaning of this invasion it showed the presence of designing people, whose presence was welcomed by one or both trustees. The master states, page 284, in his opinion, that no evidence was offered to prove the character of Cyrus Teed, in this he is mistaken, for he expressly refused to admit such testimony. Vide, page 517, Vol. 2, Record. The present bill admits that the alleged plan to introduce Dr. Teed and his followers into the society was frustrated or abandoned, and therefore the matter is of no moment in the case as at stands be-

fore the present tribunal, except as showing the conditions of the society at that time, and the assignment of error relating thereto is not for argument. The testimony on this subject is found on the following pages of Vol. 2, Record, to-wit: 517; 629–30; 875; 914 to 917; 819 to 823.

Scandals Occur.

During the period between 1891 and the latter part of 1892 the society was aroused by numerous scandals, wherein the majority of the Board of Elders were alleged to be common drunkards, and several were guilty of adultry, and other unseemly conduct; stories were in circulation seriously affecting the character of members other than the elders. Of the members shown to have been guilty of habitual drunkenness, of adultry and unseemly conduct, none were expelled or disciplined. One of the members who was particularly active in protesting against the dissipation of certain members was expelled by the Board of Elders as he alleges solely because of such activity. A very large amount of testimony was taken on this subject to prove the abandonment of all the old and rigid rules of the society, the existence and enforcement of which had preserved the society in the preceding years. When young Mr. Duss succeeded Father Henrici as the spiritual and temporal leader of the society he opened the society's wine cellars to the public, later taking out a license in his own name, which occasioned criticism; when he and his wife and two children took up their abode in the Great House it was regarded as a fatal blow to celibacy.

The testimony relating to immoralities and drunkedness is to be found on the following pages of Vol. 2: 487 to 500; 525 to 527; 542 to 554; 558 to 562; 856; expulsion and restoration of Feucht 432 to 434; 469 to 474; 483; 490; 841; 844 to 849; 905–6.

Mortgaging Economy.

On December 22, 1892, the more active members of the society were assembled at a meeting, and Mr. Duss,

with the assistance of his counsel, Mr. Hice, and one J. T. Brooks, notified the members that unless a certain paper were signed the society would be in great peril. Thereupon "Exhibit No. G" was signed by most of the members, several refusing. It purports among other things to give authority to the Trustees to execute mortgages. The evidence shows that at this time a mortgage for $400,000 had been prepared, covering the homes of the members of the Harmony Society and the surrounding lands which comprise the society tract, though no mention of it was made in the alleged power of attorney, or the use to which the money was to be put, which will be referred to later. Three days thereafter, on December 25, 1892, the Senior Trustee, Henrici, died at the age of eighty-seven, and, as it is alleged by complainants, wholly unaware of the fact that he had executed the mortgage referred to.

The next day J. S. Duss was elected Senior Trustee, and Samuel Sieber, the town constable, was elected to fill Duss' place as Junior Trustee; so that both Trustees, who by custom and under the Articles of Association, were the absolute rulers of the society, were men who, but a short period before, acted as mere employes of the society; and as Mr. Sieber, the new Trustee, had a wife, these occurrences excited comment among the old members of the society. This seems to have been the culmination of a series of troubles that led to radical action on the part of the major portion of the old and intelligent members of the Harmony Society.

Proceedings for Dissolution by members of the Society.

On the 14th day of February, 1893, the following members of the Harmony Society filed a Bill in Equity in the Court of Common Pleas of Beaver County, Pa., praying for the dissolution of the Harmony Society, viz.: Benjamin Feucht, Rebecca Feucht; Henry Feucht, Margaret Feucht, Tirza Feucht, Dorotha Hoehr, Rebecca Lautenschlager, Edward Kellerman and Christina Rall. The

defendants in said bill being the members composing the Board of Elders and some thirteen others, many of the latter having been admitted into the society since 1890. Of the defendants, the evidence showed three or more were openly in favor of the dissolution of the society, and the evidence further shows that a majority of the defendants within ninety days thereafter acquiesced in the division of the assets, both real and personal, of the society. The complainants by filing the present bill prevented, as they allege, the division of the remainder among the liquidating members who remained at the time said bill was filed.

The evidence in this matter is important for a proper understanding of some of the issues of fact, and the subsequent action of the members. While the Master frequently refers to this proceeding, he, throughout his long opinion, which is filed with the defendants' numerous exhibits, fails to include a copy of this bill in his report, or even give a summary of its more important allegations, although he makes it a means of several important findings of fact.

This bill in equity is marked "Plaintiffs' Exhibit No. 15," and is printed in full on pages 939 to 951; Vol. 2 of record. Exhibit No. 15. Summary thereof.

There is given in said bill a history of the Harmony Society from its foundation down to the year 1847; the personal history of the plaintiffs; the recital of the abandonment of certain customs, and that the principle of celibacy had ceased to exist; that the society is wholly occupied with temporal affairs, and that equality and brotherhood have been put aside and forgotten; that the Board of Elders of the society had the power of perpetuating itself and of filling vacancies among its own number without any of the other members of the society having a voice in their selection; that a majority of the members of said Board of Elders were confirmed and common drunkards and an evil ex-

ample and offense to those who still cling with affection to the primitive form and faith of said society; that John S. Duss and Samuel Sieber, in the exercise of the power and authority of their positions as Trustees, declared it to be their purpose to abolish the pursuit of agriculture and the long standing customs of the society, and that it was their purpose to sell the property and the land of said society and to make the same solely a manufacturing society; that Trustee Duss had recently sold, assigned and disposed of all or substantially all of the valuable dividend paying stocks in numerous companies and corporations, amounting to over two millions of dollars, ostensibly for the purpose of paying debts, thereby diverting the assets of said Harmony Society from the plaintiffs and other members; that said J. S. Duss had in his hands the management of all the business affairs of the society; that his said co-trustee and said elders are entirely under his control and merely act as his servants and agents.

And the prayers for equitable relief *inter alia* were as follows:

That a receiver be appointed by the Court to take charge of and manage the affairs of said society until the winding up of the same and the distribution of its property and assets, real and personal; that the Court order and direct the Harmony Society a dissolution and marshalling of its assets, of its accounts, and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under the order of Court, or in such other manner as may be most expedient to and among the parties equally and equitably entitled thereto, and that the petitioners therein may receive their just share and proportion of said assets, real and personal, in severalty.

Under the above proceedings and the steps taken subsequently to cover up the property, the present complainants allege that the Harmony Society became dissolved in law

and fact, independent of the grounds hereinbefore suggested, to wit: the illegality of the general scheme of government and the manner in which the assets of the society were held and employed in the later years of its life.

The application of the complainants in the above bill, for a preliminary injunction was refused, without any opinion being filed, and the cause was set down for the taking of testimony and final hearing.

Liquidation begins.

Later arrangements were entered into for the purpose of adjusting the claims of various members of the society. With the bill pending for the distribution of the assets, agreements and terms were made with all who asked. The evidence shows that Mr. Duss, the senior trustee, in conjunction with J. T. Brooks, the general adviser, began distributing the moneys of the society upon the basis of about $5,000 per member, irrespective of the length of service in the society, or the real character of the recipient. The facts bearing on this branch of the case are deemed important, and therefore the same are herein set forth:

Joint Stock distributed.

After various negotiations Senior Trustee Duss agreed to pay to each of the five Feuchts $5,600, or a total of $28,600, and to deed them a certain tract of land owned by the society at McKees Rocks, containing 8 acres, and worth about $25,000. It is not true as alleged in the special answer of J. S. Duss that the firm of Shiras & Dickey conducted said settlement, or advised in any way the said Duss, or said Hice, his counsel, but that said settlement was left entirely to the Beaver County attorneys of the complainants for adjustment. *Vide*, 856–7, vol. 2.

Before and after the said Feuchts had received said money and real estate, negotiations were carried on by Senior Trustee Duss, his agent and his counsel, with most of the active members of the Harmony Society, the majority of whom were defendants in the bill brought for dissolution aforesaid. As a result of these negotiations or settlements

the members began departing, receiving on an average about $5,000 apiece. In the quit-claims signed by them, the assets of the society over and above an alleged indebtedness, was put at $200,000, so that each member as he retired, apparently received his per capita share, there being about forty members at this time. Subsequent testimony taken in this case puts the present assets at a very much greater figure.

The money necessary for such a division was partly raised by placing a mortgage of one hundred thousand dollars on the town of Economy and its surrounding fields. *Vide*, page 670, Vol. 2.

The members thus retiring before the present bill was filed included about all the male members of the Board of Elders of the Harmony Society, including the Junior Trustee and about all the men having in charge as foremen or superintendents the various departments of labor and industry, such as farming, wagon shops, saw mill, tailor shops, &c.

Mr. Stickel, whose testimony appears on pages 533-535 of Vol. 2, Record, testified in this case that, before he and his family retired from the society, he had three interviews with Mr. Duss, the Senior Trustee, and that it was agreed that the society be dissolved, and that said Duss referred to the fact that he had devised a scheme while living in Nebraska, whereby he might bring these results about *Vide*, pp. 533-536, 565-568. Mr Duss admits the several interviews, but denied the correctness of Stickel's statements. *Vide*, pp. 872-3-4.

Female Elders.

After all the male members but one of the Board of Elders had departed, the Board was filled with six female members, who comprised the remnant of the society, an event without a precedent in the society, for up to that time a female had never been selected upon the Board. The women thus selected, with the exception of Susie C. Duss, the wife of the Senior Trustee, were either old, infirm or ignorant, or

were women recently admitted into the society and could not talk English.

As stated before, the Master did not incorporate in his opinion a copy of this bill of the members praying for a dissolution, or give a summary thereof. Neither has he set forth a single one of the quit claims or releases of the members which constituted plaintiff's "Exhibits Nos. 1 to 15," and are printed at length on pages 951 to 966, Vol. 2 of Record. As an important part of the history in the case, we print several of these papers, which the complainants have referred to as Deeds of Partition and Liquidation, the ones given representing the several forms used in settling with the members of the society.

Alleged Deeds of Liquidation.

"Exhibit No. 1."

Release or Quit Claim of Hugo Miller.

ECONOMY, BEAVER COUNTY, PA.

I, Hugo Miller, being one of the members of the Harmony Society, at Economy, Beaver County, Pa., also one of the Board of Elders of said society, and being desirous of terminating said membership and withdrawing from said society, declare that I do hereby surrender and renounce forever all my rights, interests and privileges as a member of said society; and further, in consideration of the sum of five thousand ($5,000) dollars paid to me out of the funds of said society by Duss & Sieber, Trustees thereof, I hereby cancel, release and discharge any and all claims whatsoever which I, my heirs or lawful representatives may or could ever have against said society or its property or any part thereof, I hereby declaring all such claims to be fully compromised settled and discharged.

Witness my hand and seal this eighth day of March, 1893. HUGO MILLER,

In presence of

K. RUDOLF WAGNER.

Hugo Miller was the first to receive his money whi
the proceedings were pending for dissolution. Mr. Mill
was at first opposed to the bill, appearing as a defendant i
the answer filed. He was a man of middle age, activ
intelligent, a member of the Board of Elders and filling th
position of foreman of the saw mill, speaking English an
German equally well. He received $5000 "in discharge
any and all claims whatsoever which I, my heirs, or lawf
representatives, may or could have against said society,
its property, or any part thereof, hereby declaring all suc
claims to be fully compromised, settled and discharged.
He was the only member who signed a release like th
above, for before the others received their amounts new an
more carefully devised quit claims were prepared.

The next to retire were Julius Stickel, Pauline Stick
and Bertha Geratch, who jointly executed the followin
paper:

"Exhibit No. 12½."

**Release or Quit Claims of Julius and Pauline Stickel an
Bertha Geratch.**

ECONOMY, PA., March 29th, 1893.

We, Julius Stickel, Pauline Stickel and Bertha Geratch
being each a member of the Harmony Society at Economy
Beaver County, Pa., and being desirous of terminating sai
membership and withdrawing from said society, do declar
that we do each hereby of our own wish and purpose, sur
render and renounce forever our membership in and con
nection with said society, likewise all our rights, interest
and privileges as members thereof. And further, in con
sideration of the sum of three thousand five hundred do
lars ($3,500) in cash paid to Julius Stickel, for the join
account of himself, said Pauline Stickel and Bertha Geratch
out of the funds of said society, by John S. Duss an
Samuel Siber, Trustees, receipt whereof is hereby acknow

edged, we do each hereby cancel, release and discharge any and all claims whatsoever, which we, or either of us, our or either of our heirs or lawful representatives may or could ever have against said society, or its property or assets or any part thereof; we each hereby declaring all such claims to be fully compensated, settled and discharged. And we do each further agree and declare that we jointly and severally accept said sum of money and declare all our claims against said society compensated, settled and discharged, in full knowledge of the condition of said society as disclosed by the affidavits of Dickson and others filed in the suit of Feucht and others against Duss and Siber, Trustees, in Common Pleas Court of Beaver County, Pa., and that we do each know that said society is the owner of stocks and bonds of the nominal value of several hundred thousand dollars, also of judgments, mortgages and unsold real estate and buildings in Beaver Falls of the nominal value of between two and three hundred thousand dollars, also of certain lands in Warren and Forest Counties, Pa., and in Michigan and in Allegheny County, Pa.

Also that while that it may be that said society may have and be the possessor of several hundred thousand dollars' worth of property after paying all its debts, we are entirely satisfied to accept as our share therein the said sum of Thirty-five Hundred Dollars, and that we, nor either of us, will ever hereafter make any further claim for other or further payment of any sum whether to us, or either of us, no matter what may be the value of the possessions of said society after payment of its debts. We also further acknowledge the cancellation and release without payment of any money thereon, of an account of said society, against Henry Stickel, dated March 10, 1893, amounting to $120.-42, said cancellation and release of said account being a further consideration to us moving, in addition to said Thirty-five Hundred Dallars, in consequence and in con-

sideration whereof, we do each sign this instrument in writing.

Witness our hands and seals this 29th day of March, A. D. 1893.

In presence of
J. T. BROOKS.

JULIUS STICKEL, [SEAL]
PAULINE (her mark. x) STICKEL, [SEAL]
BERTHA GERATCH. [SEAL]

The Stickel release refers to the Feucht Bill then pending in Beaver County, and like the Miller release, no other members signed one exactly similar to it. Julius Stickl, as stated before, alleged that he retired under an express understanding with Mr. Duss that the society's assets were to be divided. Stickel, like Henry Feucht, was very active in his efforts to put an end to the debauchery and turmoil in the society. The evidence nowhere impugns the motive or character of him or his family. Mr. Stickel's testimony appears on pages 521 to 574, Vol. 2.

The next member to retire was J. Jacob Niclaus, another member of the Board of Elders, and an active man in the industrial affairs of the society. He got $5,000. The paper signed by him was as follows:

"Exhibit No. 4."

Release or Quit Claim of J. Jacob Niclaus.

I, J. Jacob Niclaus, a member of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby of my own wish and purpose surrender and renounce forever my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof. And further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Siber, Trustees, receipt whereof is hereby

acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society by its Trustees, its property or assets, or any part thereof, I hereby declaring all such claims to be fully compensated. settled, released and discharged. And I do further declare that I have accepted said sum of five thousand ($5,000) dollars and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its Trustees, its property or assets, or any part thereof, (entirely at my own solicitation and without any invitation, request or solicitation so to do by said Trustees or either of them) in the full knowledge of the fact that said society owns in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan, and in Warren County, Pa., also certain tracts of land in Allegheny County, Pa., also stocks and bonds in various railroad, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars, also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the estimated value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interests therein said five thousand ($5,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said company after payment of its debts; (all such claims thereto being by me hereby expressly barred and discharged).

Witness my hand and seal this fifth day of May, 1893.

In presence of: J. JACOB NICLAUS.

FREDERICK VIERECK.

The next members to sign a release and get their money and also certain real estate that was set aside in severalty for them, were the five members of the Feucht family, though they did not formally retire from the society until June:

"Exhibit No. 10."

Release or Quit Claim of Henry Feucht, et al.

The undersigned, members of the Harmony Society at Economy, Beaver County, Pennsylvania, being desirous of withdrawing from said society and terminating our membership therein, do declare, that we, and each of us, of our own wish and purpose, surrender and renounce forever, our membership in and connection with said society, as also all our rights, interests and privileges as members thereof; and further in consideration of the sum of five thousand six hundred dollars to each of us in hand paid, out of the funds of said society, by John S. Duss and Samuel Siber, Trustees thereof, the receipt whereof we do each hereby acknowledge, (the aggregate amount being twenty-eight thousand) and the further consideration of a conveyance to us of a tract of eight acres more or less, of land situate in the Borough of McKees Rocks, (late Chartiers) Allegheny County, Pennsylvania, we have released, quit claimed and discharged, and by these presents do each release, quit claim and discharge forever the said Harmony Society, its Trustees and legal representatives and its property and assets of whatever name, real and personal, and wherever the same may be, or be situate, of and from any and all claim and claims, demand or demands, of any and every nature and kind which we or either of us, as members of said society, or personally, have or might or could have or assert or maintain at any time hereafter against said society, its Trustees, or legal representatives, or its property, whether for labor done, deposits, property or funds received by said society from us at any time, or from any other person or persons for us, or either of us, and whether the same were in any way received in trust

or otherwise, so that at no time hereafter shall we or either of us, our or either of our heirs or legal representatives have, assert or maintain any such claim or claims, demand or demands, against said society, its Trustees or legal representatives, or its property or assets, or any part thereof, but thereof and therefrom shall forever be debarred by these presents.

And we and each of us do further declare that we have compromised, settled, released, quit claimed and discharged said society, its Trustees and its property and assets of and from all claim and claims, demand or demands as aforesaid with full knowledge of all articles,articles of associatior, compacts and agreements by and between the members of the society, and any rights we either of us have or might or could have thereunder, and of the property of said society, that in addition to its property at Economy, it owns several thousand acres of land in Michigan and in Warren County, Pennsylvania, also certain parcels and lots of land in Allegheny County, Pennsylvania, and in Beaver Falls, New Brighton and Rochester, Beaver County, Pennsylvania, etc., as also bonds and stocks of railroad, mining, manufacturing and other corporations of the nominal value of several hundred thousand dollars, and divers judgments, mortgages, notes, etc, and that said society may have property worth several hundred thousand dollars, left after the payment of its debts and liabilities and with full knowledge of all these facts, we have each accepted the sums and consideration aforesaid in full satisfaction of any possible claim we or either of us have or may or can hereafter have or assert against said society.

We do also hereby ratify, approve and confirm the articles of agreement, and grant of power to the Trustees of said society, to borrow money therefor, and secure the same by mortgage or mortgages of its property or any portion thereof or otherwise, etc., etc., as contained in the instrument of writing executed by all the then members of the society but

Benjamin Feucht and Rebecca, his wife, and Henry Feucht and Margaret, his wife, dated the 20th day of December, 1892, and recorded in the office for recording deeds, etc., in and for the County of Beaver aforesaid.

In witness whereof we have hereto set our hands and seals this sixteenth day of May, A. D. 1893.

Signed, sealed and de-	HENRY FEUCHT,	[SEAL.]
livered in presence of	MARGARET FEUCHT,	[SEAL.]
M. F. MECKLEM,	BENJ. FEUCHT,	[SEAL.]
	REBECKA FEUCHT,	[SEAL.]
	THIRZA FEUCHT,	[SEAL.]

In so much as the present complainants contend that Mr. Duss was acting as liquidating trustee at the time these members retired, and this plan was checked by filing the present Bill, we call the Court's particular attention to the wording in the above quit claim, where it appears that if Duss should dissolve the society by paying off, from time to time, all the members so that he alone remained, that the above release would be an effectual bar to any further demand against Duss, by the liquidating members who retired, even though he became the self-created survivor, with millions of assets undisposed of. Further comment is necessarily reserved for the argument.

The next member to obtain a settlement was Sigmund Stievafter, who recieved $5,000. He signed a release, "Complainant's Exhibit No. 5," page 956, Vol. 3 of Record: the same being identical with "Exhibit No. 4," above quoted.

The next to settle was Morris J. Fredericks, another member of the Board of Elders, a life long friend of Henrici and Lenz, and of the older and mostly deceased members of the society. He was likewise a defendant in the Bill for dissolution. Mr. Fredericks testified he was offered $2,500 by J. T, Brooks, who was very active at this time in the management of the internal and external affairs of the society, that he absolutely refused to leave unless he got

$5,000, the amount necessary to provide for himself in his declining years. (Vide, pages 589 to 591.) Upon leaving he took up his abode in the Old Man's Home, situate just across the line from the Economy tract, Mr. Fredericks signed a paper marked "Complainant's Exhibit No. 3," page 953, Vol. 2 of Record, similar to "Exhibit No. 4 *ante*.

The next to depart with $5,000 was B. Platz. The evidence indicates that he should have received nothing whatever, unless he was paid on the basis of his share, as the part owner of the property in liquidation, for unlike most of those who retired, he was a drunken and worthless creature. (Vide, page 493, 544, Vol. 2.) He signed a paper marked "Plaintiff's Exhibit No. 2," page 951, Vol. 2 of Record, similar to Exhibit 4," *ante*.

The next two to retire were Christina Hoerer and her son, Leonard Hoerer. The son had been a member of the society about ninety days, and when leaving he received $2,500 and his mother an equal amount. The Hoerers were active, intelligent and industrious. No adequate reason is given for their departure. They signed a paper, marked "Plaintiff's Exhibit No. 7," p. 959, Vol. 2, of Record, similar to "Exhibit No. 4," *ante*.

The next to get a settlement was Elizabeth Sieber, wife of the Junior Trustee. She received $4,000, and then eloped openly with the village blacksmith. Why she should be paid such a large sum of money is referred to in the argument. She signed a paper, marked "Plaintiffs' Exhibit No. 6," page 957, Vol. 2, of Record, similar to "Exhibit No. 4," *ante*, and she apparently also signed "Exhibit No. 12." page 963, ditto.

The next to depart, being the seventeenth in number, was Samuel Sieber, Junior Trustee, who got $1,000; his wife and the blacksmith getting the lion's share. He, with his wife, signed "Plaintiff's Exhibit No. 12," page 963, ditto. The consideration expressed therein, $5,000.

As the Master has found that these large sums of money, and also real estate (given at a time when the society's treasury was practically empty) were mere "donations," authorized by the Articles of Association, we submit as a part of the history of the case "Exhibits Nos. 8 and 9," pp. 960-1, Vol. 2, signed by Lena Fritsch, in October, 1890.

"Exhibit No. 8."

Receipt—Lena Fritsch.

"After having become on the 14th day of February of this year a member of the Harmony Society at Economy, I have this day (October 22, 1890) withdrawn myself, of my own free will therefrom, and have ceased to be a member of said society; have also received this day from Henrici and Duss, Trustees, Ninety-five ($95) Dollars, in order to pay my travelling expenses and such like, which sum is in full of my claims on said society or any member thereof."

Witness: "Lena Fritsch."

"H. Gasser."

"J. E. Hirsch."

"Exhibit No. 9."

Receipt—Lena Fritsch.

"The undersigned hereby declare that she has received from Messrs. Henrici and Duss, Trustees, the sum of Twenty-four ($24) Dollars, for the purpose of an advance to go on a trip, and she promises herewith to repay this sum in case her circumstances in Germany shall make it possible for her to spare this money.

"Witness my hand, this 23rd day of October, 1890."

Attested by "Lena Fritsch."

"J. E. Hirsch."

At the time Lena Fritch departed in 1890, the complainants do not contend that the scheme of liquidation was then being carried out, but that the same took form in the

beginning of the year 1893. The Court's attention is called to the sums paid under these two receipts. The latter receipt for $24 being advanced on a promise that it be repaid in case it were possible after she, the retiring member, reached Germany. The wording of this receipt is important. The evidence shows that with one exception before Mr. Duss began his settlements with the members of the society in 1893 that the usual sum paid retiring members, if they were paid at all ranged from $10 to $25. *Vide*, Hice, 743, Schwartz, 401, Fredericks, p. 593, Vol. 2.

Numerous deaths. No new member elected.

From the year Mr. Duss entered the society in 1890 down to December 5, 1898, a large number of deaths occurred in the society, eighteen in all, as follows: Worth, an elder; Kerschbaum, an elder; Fishern, an elder; Henrici, senior trustee; Lauppe, an elder; Scheid, an elder; Beck; Hoehr; Wolfangel; Hermansdorfer, an elder; Diem; L. Wolfangel; Lautenschlager; Reithmueller, junior trustee and Kellerman. These, with the seventeen who retired, as before stated, made a total change by death and settlements of thirty-five, practically the whole society as a going organization, for there now remains only about eight persons, a number insufficient to fill the Board of Trustees and Board of Elders. But two men remain, Mr. Duss and one Franz Gilman, the latter practically an imbecile. On page 576, vol. 2, he testified that his duties on the Board of Elders "was obedience," and the evidence shows that he had no conception of the duties on the Board of Elders. The remaining members are Mrs. Duss, wife of the senior trustee, and five other women, but one of whom can speak English, and two are practically bedridden. It is admitted that Mr. Duss at the present time is the only one capable of transacting the external and internal business affairs of the society. *Vide*, page 699–700; 773.

Not a new member has been elected since March 14, 1893, when Leonard Hoerer was admitted, and ninety days

later left with $2,500, as the expressed consideration of his quit-claiming in his own behalf and that of his heirs, all his rights in the property of the society. Why no new members were elected in view of the deaths, retirements and the character of the remaining surviving members is of necessity reserved for the argument.

Alleged Bank conspiracy and financial matters.

At this point in the history of the case it becomes necessary to refer to certain financial transactions growing out of the wrecking of the Economy Savings Institution, a private partnership bank, located in the town of Beaver, Beaver County, Pa. When organized in the year of 1868 it had as partners Henry Hice, John Reeves, H. T. Reeves and the trustees of the Harmony Society; the latter then owning seven-tenths of the stock.

Nearly one-third of the Master's Report is devoted to financial matters and complicated exhibits growing out of the operation of this bank; his position being in line with the arguments and attitude of defendants' counsel, and we deem it important to briefly state what, it seems to complainants, are the facts necessary to consider therein in order to avoid unnecessarily putting upon the present Court an entirely unnecessary burden. The Economy Savings Institution became the recipient of over a million of dollars of deposits, received from a large number of individuals and corporations. Henry Hice, the attorney for the society, became the president of this bank, and continued apparently throughout as such officer. H. T. Reeves vice-president, and John Reeves was its cashier. Messrs. Hice and Reeves were also interested with the Trustees of the Harmony Society in a file works and in a cutlery works in Beaver county and were the active officers in the latter concerns. The business of manufacturing files, cutlery, &c. did not prove successful. As a result from time to time Hice and Reeves, as the officers of the bank, deliberately took, or permitted to be taken, every dollar of the deposits, amounting to over

one million of dollars, and sank it in these manufacturing concerns. They were practically maker and payee in these transactions. Messrs. Hice, Reese and the Master call this misappropriation of the depositors money by the modern term "overdrafts." What such transactions really were is necessarily reserved for the argument. There is no evidence that Father Henrici, the aged senior trustee, was an officer of any kind in these several concerns and it is doubtful if he, in his latter years, understood what was going on. *Vide*, pages 27–28, vol. 2½ Record. Mr. Hice testified that Mr. Henrici insisted on the manufacturing concerns continuing even at a loss in order that the men might be employed, and he, Hice, objected because the running up of a surplus stock of files would lead to their deterioration by rusting, &c. *Vide*, page 712-713, vol. 2.

Conversion of Joint Investment Securities.

In the fall of 1891 Mr. Duss admits he knew of the real situation at the bank, *vide*, page 894, vol. 2, but made no efforts to close the bank, but continued to permit deposits to be accepted, in violation of the Act of 1889. In the fall of 1892 when the leading members began making inquiry about the financial condition of the society the first steps were taken to meet the situation. Within the next three months after December, 1893, Mr. Duss placed a mortgage of $400,000 on the Economy tract of three thousand acres, and disposed of practically all of thirteen hundred thousand dollars of endowment or trust funds, representing the savings and investments of the members of the Harmony Society for nearly one hundred years. The evidence fails to show that in the execution of the mortgage or in the sale of these investment stocks that a single member of the society, other than Mr. Duss and his outside colleagues had any knowledge. The society had a floating indebtedness of only about three hundred thousand dollars, amply secured. Of the trust funds converted over, $1,200,000 went into the despoiled bank, and there is no proof that the members of

the society were aware of this liquidation by its trustees, or that the society was made to pay the entire indebtedness of Messrs. Hice and Reeves, the executive officers and managers of these losing concerns. The complainants contend that a receiver should have been appointed for the bank, file works and cutlery works, and the losses properly ascertained and the society made accountable according to law, so that the members would be protected and the losses properly apportioned, thus saving not only some three hundred thousand dollars due from Hice and Reeves, but having passed upon the question whether they were not really liable for all, or the greater part of these losses. These bank officers made, or permitted to be made, absolutely false and misleading reports to the State Department, *vide* page 14–15, also page 28–29, vol. 2½ Record, and as Henrici was dead when the present cause was heard before the Master, their assertions while on the witness stand, should, in view of their sworn mis-statements, have been rejected by the Master, unless otherwise supported; yet the testimony of Messrs. Hice and Reeves in this case is given full credit in every instance. As stated before, Duss instead of having a receiver adjust the affairs of these outside concerns, saw fit to act on his own motion, or under the suggestion of Mr. Hice, or Mr. Brooks, so that practically the entire investment fund, designated as the joint and indivisible property of the members of the Harmony Society, was diverted by him either illegally, or in the position of unauthorized liquidating trustee. The meeting of these exigencies for which he had ample time, both Mr. Duss and the Master apparently set up as the principal answer to the numerous allegations of the present complainants that the residue of the assets of the Harmony Society have been preserved for Mr. Duss' sole benefit.

Index. The testimony relating to this Bank, the Cutlery works and File works is to be found on the following pages of the record: Duss, 420; 894 to 900; Brooks, 644-5;

674 to 676: Hice, 712-13; 738; 745; 759; Dickson, 793-4; Vol. 2. Also Reeves, pages 1 to 24; Morrison, pages 24 to 29, Vol. 2½, Record.

Notice of *lis pendens.*

In September, 1893, the present Complainants caused notice to be sent to Mr. Duss, Senior Trustee, that any further disposition of the Society's stocks, bonds or real estate would pass no title. *Vide*, Hice, page 761, Vol. 2 of Record. Shortly after this notice the final steps were taken in the judgments of the Complainants, to wind up the Society and place its remaining property in such shape that the survivors of the Society, be they one or more, would be in a position, if not enjoined, to become the owner of securities, so controlled, that no one would ever be able to trace them, or follow them when converted into money.

Union Company, alleged final act of liquidation.

This brings the history of the case to the recital of the formation of the Union Company and its present relation to the defendants in this proceeding. It is one of the most important questions in the case, bearing as it does on the question of dissolution. The Court below sustained the Master in finding that the Society was not dissolved, and gave this as a reason for not passing upon the ownership of the assets in case of dissolution; in this the learned Judge indirectly reverses the Master who made his Report in such a way as to practically give the property over to the survivor or survivors of the Society, be it Duss or some one else.

The Union Company was organized when the membership of the alleged Society had been rendered by death, settlements and the failure to elect new members to two or three men and half a dozen women. Notice having been received of the pending suit by the present Complainants no one else was apparently permitted to leave, (*Vide*, Duss, page 101, Vol. 1).

This Company was very quietly organized, under the

General Corporation Act of 1874, by Attorney Hice, his two sons, W. S. Morrison and W. J. Stuart on January 17, 1894, Plaintiff's "Exhibit No. 27," page 967, Volume 2 of Record. Its capital stock was fixed at $5,000 with 100 shares of the par value of $50, and the application stated that the "said corporation is formed for the purpose of the purchase and sale of real estate, or for holding, leasing and selling real estate" and that "the business of said corporation is to be transacted in the Borough of Beaver, County of Beaver, State of Pennsylvania." This application was granted by the Governor, and on the 16th day of February, 1894, it was recorded in Beaver County.

The evidence shows that the ulterior purpose of organizing the Union Company in the above manner was to annoy the present complainants, and at the same time affect the public, particularly the State of Pennsylvania, in the name of which the escheat proceedings had been commenced, or were contemplated. J. T. Brooks, one of the principal witnesses for the defendant, said on page 645, Vol. 2 of record, that the Union Company was organized on his recommendation "to facilitate the sale of the property from time to time whenever we should get ready to sell," and "to remove the property in a sense out of sight and out of mind so far as the question of escheat was concerned." No sooner was the charter obtained on the application of Hice *et al* than simultaneous steps were taken to increase the capital stock of the Union Company to $400,000, and to have the Trustees of the Harmony Society convey all the land of the society to the Union Company in payment of the increase of part of the capital stock.

Plaintiffs' "Exhibit No. 28," page 969, Vol. 2, is the authorization of the increase of capital stock, and the stockholders who voted were the same individuals who appeared in the application for the charter.

Plaintiffs' "Exhibit No. 29," page 972, Vol. 2, is a copy, dated April 12, 1894, of the Treasurer's return of in-

ise of capital stock from $5,000 to $400,000—"said ad-onal stock ($395,000) being issued for real estate situ-in Allegheny and Beaver counties, Pennsylvania, which been conveyed to the company.

Defendants'. "Exhibit H," page 112, Vol. 1 of record, ports to be an authorization by the members of the Har-ay Society to the Trustees thereof to convey all the ds of the society to the Union Company in considera-n for stock to the extent of three hundred ninety-seven usand and five hundred ($397,500) dollars, out of a total four hundred thousand ($400,000) dollars."

The preamble to this document contains a statement t the society "is now indebted to various persons in ge sums of money, payment of a part of which may be manded at an early date." This statement is incorrect, under the evidence at this date the society had but one parent creditor, represented by the McCullough mort-ge, which Mr. Brooks, counsel for the society and coun-for the lender, had placed upon the property, against ich debt the alleged society had personal assets suffi-nt to pay. Next comes a whereas in said exhibit as lows:

> "WHEREAS, The trustees of said society are advised that a suit is about to be brought against it in the name and on behalf of a large number of persons who claim to be lawful heirs of certain deceased members of said society, the object of said suit being to compel the society to pay large sums of money to said persons as portions of the society's property claimed to be due to said persons as heirs of such deceased members, which claims we regard as totally unfounded."

This averment is important as showing the knowledge the pendency of the present proceedings and a desire to ft ground before the legal proceedings began.

Then said exhibit recites the advantage of having the land of the society represented by capital stock of an incorporated company, so that the same might be disposed of more readily: then follows the consent and request of the members that J. S. Duss and G. Reithmueller, Trustees, convey to the Union Company "all the lands, tenements and hereditaments, situate in Allegheny and Beaver Counties, Pennsylvania, now owned by the society, to the end that all said lands, tenements and hereditaments may be owned, held and managed by said incorporated company, and be sold and otherwise disposed of from time to time, in pursuance of proper corporate action, as may be determined by the Directors and officers of said incorporated company." This paper was executed April 11, 1894, and contains in addition to the individual signatures and acknowledgements of the surviving members, also the separate acknowledgements of Johanne Hermansdoerfer and Susie C. Duss, wives of two of the members of the society, indicative apparently of the fact that individual ownership and dowry rights were now recognizable in the property.

In pursuance of this authority the property of the society was conveyed by the Trustees to the Union Company, which land not only included the home of the society, with its mills, factories, shops, the separate home of each member, the residence or Great House of the Trustees, the society's house of worship, and the gardens and surrounding farms, all these passing to this corporation for the purposes of sale as its Directors might determine, and the property conveyed also included the society's cemetery, containing the remains of Fathers Rapp, Baker, Henrici and Lenz, and of the other deceased members of the society since 1825; which burial place also contained the bodies of the parents, the brothers and sisters or other near kinsmen of the present complainants. In said deeds to the Union Company the society's property in the Town

of Beaver and all that in the County of Allegheny is likewise included.

The secrecy of these proceedings prior to the time the present complainants filed this bill resulted in the allegation in Paragraph 20th thereof that the conveyance to the Union Company was without the consent or knowledge of the members, other than the Trustees and Mrs. Duss. In this they were mistaken, having no knowledge of "Exhibit H." It is therefore a fact that the conveyance of the society's home to the Union Company was authorized so far as the personal assent of the members could bring this about.

As the results of the transfer of all the property by the surviving members of the society to the Union Company the said members became merely tenants at will of the Union Company, the authority having been given to make a conveyance to the corporation, contemplating and directing the sale of said real estate, it became possible and was the duty of the directors of said Union Company to sell the property, thus turning the realty into money, so that the joint and indivisible property of the society became personalty, as it is necessarily to-day, when represented by the capital stock of the Union Company. The alleged existing communistic society being without a home and not bound by the Articles of Association to remain anywhere in particular, either within the State of Pennsylvania or even in the United States, is in a position to depart at will, taking with it in cash or stock certificates the very property now in controversy, all of which is referred to in the argument.

All the evidence bearing on the formation of this company, its purposes and its acts, is printed in the present Record and for the purpose of the convenience of the Court is separately indexed in the brief.

The manner in which the Union Company was reorganized, how the stock was transferred and paid for appears fully in the testimony of its Treasurer and Secretary,

James Dickson, pages 774 to 792, Vol. 2, of Record. The Union Company, instead of having its place of business in Beaver, Beaver County, after re-organization changed its office to the City of Pittsburgh, County of Allegheny, where its directors meet, composed of two of the surviving members of the Harmony Society, and three non-members, of whom Mr. Dickson, the Secretary and Treasurer, is one. Mr. Dickson testified that the directors of the Union Company managed all the affairs of the real estate covered or controlled by it, and that the Board of Elders have no control over it or the management of results of the real estate of the Union Company (page 791, Vol. 2).

The creation of this company, it is admitted, is wholly due to plans devised by Duss and Messrs. Hice and Brooks —the surviving members assenting thereto by signing "Exhibit H," *ante*. The testimony of the founders of this company indicates that one of the controlling reasons was to defeat any proceedings attacking the title by escheat or otherwise. Mr. Duss testified he was advised that by removing the title of the society and covering it up with that of the corporation it would put an end to escheat proceedings (page 878, Vol. 2). Mr. Brooks testified that the Union Company would put the title in a safer condition and "put the property out of sight," so far as an escheat was concerned (page 695, Vol. 2). Mr. Hice testified that the escheat proceedings were taken into consideration when the application for the charter was made in such a way as to avoid publicity (page 760, Vol. 2).

Why, if the trust were legal, and dissolution had not been effected or contemplated, an escheat was feared, is, necessarily, reserved for the argument.

Index to the Testimony Relating to Union Company.

Duss, pages 387 to 394; 409-410; 420 to 425; 598-600; 603-4; 878.

Brooks, page 645-6; 694-5

Hice, pages 731 to 733; 759 to 761.

Dickson, pages 774 to 791.

"Exhibits H," page 112, Vol. 1; "Exhibit No. 27," Charter application, page 967; "Exhibit No. 28," Increase of Capital Stock, page 969, Vol. 2.

Individual Life Insurance by Duss, Trustee.

It was shown in the evidence of this case that Mr. Duss, after the conveyance of the society's property to the Union Company, took out life insurance to an amount of upwards $100,000. As testified that the Harmony Society was the beneficiary; on subsequent and further cross-examination it was shown that this was not the case. One policy for $15,000, "payable to Susie C. Duss, her executors, administrators or assigns"; another policy for $30,000 on the life of J. S. Duss was payable to his executors, administrators or assigns"; another policy in the sum of $20,000 on the life of J. S. Duss was payable at his decease to his legal representatives or assigns".

Before the case closed before the Master, all these policies, by the consent of the beneficiaries were made payable to the Harmony Society. As originally issued, his wife and his two children, the latter not members of the society, were the beneficiaries under these policies. The complainants contend that, as Mr. Duss was then acting as a liquidating trustee, the policies were intended for his personal benefit and that of his family pending dissolution, otherwise, as the premiums were paid out of the society's funds, the transaction would have been a fraudulent one. The testimony bearing upon the manner these policies were taken out, appears in full on pages 604 to 609; 612-13; 879 to 881, Vol. 2 Record.

Economy filled with non-members.

It also appeared in evidence that shortly before and after the Union Company took possession of the town of Economy, its numerous houses were rented to hundreds of outsiders, including over twenty of Duss's relatives and connections. (*Vide*, pages 614 to 620), and that the common store, where the members got their supplies, was rented, Duss distributing the supplies thereafter from his own house to the members, instead of the same being managed by the board having charge of the internal affairs, and that the saw mill, hotel, factories and shops all passed into the hands of outside people, who conducted their business independently of the society's, and as tenants of the Union Company, so that the few remaining members have become undistinguishable in the old town of Economy.

The above statement of facts, including exhibits, questions of law as relating to facts and circumstances, represent the condition of affairs when the present complainants instituted these proceedings. The *res gestae* in this case are numerous, intricate and important; it being particularly desirable, from the view taken by complainants's counsel, that this Court, confronted with a voluminous record, numerous questions of law and fact, should have laid before it the various facts that, taken collectively, create the fabric of this case, and which complainants say has been so disregarded by the Master, and which occasioned the 48th assignment of error, page 371, Vol. 1. Therefore, the present history of the case includes many details that, taken together, comprise conditions very essential to the proper determination of facts involving questions of good faith, facts of commission and of omission, from which conspiracy may be inferred or fraudulent designs ascertained.

Complainants' bill.

Up to the date when notice was given that the bill was contemplated, neither Christian Schwartz, or any of the other complainants had ever brought or threatened suit against the Harmony Society, or any of its surviviving members. Mr. Schwartz, Mr. Koterba and the other plaintiffs at different times visited their relatives in the society when it was conducted by Trustees Henrici and Lenz and the elder members. When the members of the Harmony Society filed a bill for dissolution and proceeded to distribute the assets of the society among themselves and the remaining survivors conveyed the rest of the property to a private business corporation the situation necessarily compelled them to act at once or not at all. Hence this proceeding.

It is unnecessary to repeat at length the allegations of the complainants, for they are based upon substantially the facts hereinbefore recited. That this Court may have before it in a condensed form some of the more important averments of the complainants we print paragraphs 25 and 26 of said bill:

> "25th. That recently said Harmony Society has become dissolved as aforesaid, that all of its purposes and practices established as aforesaid by the founder of said society, and by the ancestors of your orators, have been abandoned; that its chief assets, consisting of bonds, stocks and other securies, and the town of Economy, with its buildings and the adjacent lands of said society, consisting of some 3,000 acres, and which constituted the basis of organization and business of said society, have been sold and conveyed away by the said Duss as aforesaid in fraud, however, of the rights of your orators and their co-tenants, and that by reason of the facts hereinbefore set forth your orators and the said last members, except the said Duss and wife, are now tenants in common of all of said lands and

tenements. and entitled to partition thereof, in proportion to their respective interests."

"26th. That for some time past the members of said Harmony Society have been retiring therefrom and have received the amount of their interest in said association in the land or money, or both, the land being set apart in severalty to them, and have released all of their rights and interests in said association in consideration for such payment or conveyance to them, and that by said retirement and withdrawal the membership of said association has been reduced to the persons hereinbefore named members, that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust (which your orators deny as being contrary to public policy and void in law or equity) such trust has wholly ceased and the assets of such dissolved association have reverted to the donors thereof among whom were the ancestors and intestates of your orators."

Master's Report.

The Master's Report is open to criticism which will be more fully disposed of on argument. It is sufficient to say in this place that he recommends a decree for the dismissal of the bill and imposes the costs upon the complainants first to be advanced by the defendants. The record shows that the Master, on March 15th, 1899, received from John S. Duss, Trustee, his fee fixed in this case.

The appointment of a Master in Equity causes in the United States Court is an unusual proceeding, but his appointment resulted from frequent refusals of Mr. Duss, before the Examiner, to answer questions deemed important by the complainants, so that it was resorted to for the purpose of saving time on arguments on questions certified to the lower court; (an example of which appears on pages 384 to 386, Vol. 2 of record.)

Courts' Opinion.

The report of the Master was sustained by the Court below in a very brief opinion, so that most of the present assignments of error relate to position taken by the Master, which the Court below by sustaining has adopted.

The Court below found that the society was not dissolved and that therefore it was unnecesary to decide where the property of the society would go in case of dissolution.

From the opinion and the judgment of the Court below, assignments of error were presented and allowed, and they are now before this Court for final disposition.

There are a number of minor facts, involving a large amount of testimony, that complainants, while not agreeing with some of the Master's positions, feel constrained not to press, owing to the expense of getting out such a record and because the questions of law and fact already raised are of much greater importance and will occupy all the time that is available for appellate proceedings. It developed at the time the present record was being printed that all the exhibits in the case, numbering nearly 100, had never been filed with the clerk of Court after the Master made his report and filed the testimony of the case therewith. What became of many of these important papers no one has as yet explained. The Master having died and likewise Mr. Dickson, the Secretary of the Union Company, it is probable they, if living, might explain. The "Complainant's Exhibits 1 to 15" are deemed important, but none appear in the Master's report.

The record as now made up, Vols. 1, 2 and 2½, comprise, in the judgment of complainants' counsel, all the evidence bearing upon the assignments of error that the complainants intend presenting to this Court and was printed and the proof read under the supervision of the Clerk of the United States Circuit Court—such arrangements being agreed to by defendants' counsel.

Assignments of Error.

1st. The Court erred in not entering a decree in favor of the plaintiffs and in entering a decree in favor of the defendants.

2nd. The Court further erred in charging the plaintiffs with the costs of the said bill.

3rd. The Court erred in entering the following decree;

"Decree.

"This cause came on to be heard at this term of Court upon the pleadings and evidence and the report of the Master and exceptions thereto, and was argued by counsel;

"And now, this thirteenth day of February, 1899, upon consideration it is ordered, adjudged and decreed that the plaintiffs' bill be and the same is hereby dismissed; and it is further ordered, adjudged and decreed that the plaintiffs pay the costs, including the Master's fees to be fixed *sec. reg.* and which, together with his compensation as examiner, shall be paid to the Master in the first instance by the defendants.—By the Court."

4th. The Court erred in its opinion in stating: "The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements," and including therein the agreement of 1890 (see "Exhibit F," Record p. 67).

5th. The Court further erred in holding in its opinion filed that the "recited articles of agreement are valid contracts."

6th. The Court below further erred in its opinion as follows:

"Furthermore, it does not appear that any of the persons through whom the plaintiffs claim contrib-

uted any money or property to the society. The Master has found that no such contribution was ever made by any of these persons. The correctness of that finding has not been impeached."

7th. The Court below further erred in asserting as follows:

"The other persons through whom the plaintiffs claim remained with the society and died in fellowship; they thus received and enjoyed all the benefits secured to them by the recited articles of agreement; and therefore no rights enforceable against the society passed from them to their heirs or personal representatives."

8th. The Court below further erred in its opinion in asserting as follows:

"But the hypothesis of dissolution is not wel founded. The proofs show that the society is in full life; there has been no dissolution of the society, either by the common consent of the members or by their acts. The membership, indeed, has become greatly reduced; but the rights of the society as now constituted are as sacred in the eye of the law as they were when the membership was twenty-fold greater. The society as an organization exists in law and in fact. Under the evidence, the findings of the Master on this branch of the case undoubtedly are right; hence the very foundation of the bill fails. The plainriffs do not show that they are entitled to any equitable relief whatever."

9th. The Court below further erred in its opinion in holding as follows in respect to the alleged conspiracy to wreck and dismember the Harmony Society:

"We feel called upon to say that we fully agree with the conclusion of the Master. The acts here principally complained of were, we think, designed not to destroy the society, but to save it from the consequences of business mistakes made by none of the

present officers or members of the society, and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril.

10th. The Court below further erred in sustaining the report of the Master in overruling the exceptions filed thereto by the plaintiffs as follows:

"Third. To so much of his report as finds that the plaintiffs have no interest whatever in the property of the society, and are not entitled to any part or share upon a dissolution."

11th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fourth. To so much of the Master's report as holds that the agreements of 1805 and 1827 are substantially the same; and that a new plan of goverment by the agreement of 1847 was made necessary by the death of Rapp."

12th. The Court below further erred in overruling the following exception of the plaintiffs to the report of the Master:

"Fifth. The Master erred in not finding that the agreement of 1847 destroyed the communism of the property and the patriarchal form of government provided in the agreements of 1805 and 1827, and substituted therefor a capitalistic system assimilated to the forms usually adopted for the management of capital and its employment for profit under the direction of a directory and presiding officers."

13th. The Court below further erred in not sustaining the following exception of plaintiffs' to the report of the Master:

"Sixth. The Master erred in not finding that

by the agreement of 1847, all who were then members of the society and who afterwards became members of the society, became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1847 was converted into a joint and indivisible fund, and that, therefore, upon the event of the dissolution of the association from any cause whatever, in the absence of provisions in that agreement for the distribution of said fund, the said joint and indivisible fund is to be distributed among all persons dying in the society, and the legal heirs and representatives of those who died in the society.

14th. The Court below further erred in overruling the following exception of plaintiffs' to the Master's report:

"Seventh. The Master erred in not finding that there was no joint tenancy with right of survivorship or tontine system provided for by any of the agreements referred to in the testimony; and in not finding also, as a special fact, that none of the agreements made any provision for a winding up of the affairs of the society, or for a distribution of its proceeds in the event of a dissolution of the said society."

15th. The Court below further erred in overruling the following exceptions of plaintiffs' to the report of the Master:

"Ninth. The Master erred in finding that the plaintiffs' under the agreements hereinbefore referred to have no claim on the property of the society through any of their ancestors."

16th. The Court below further erred in overruling the following exception of the plaintiffs' to the report of the Master:

"Tenth. The Master erred in holding that any

inconsistency exists in the allegations of the 6th and 26th paragraphs of the plaintiffs' bill, and says that the proper construction of the said 26th paragraph is that the trust is contrary to public policy and void in law or equity."

17th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Eleventh. The Master erred in holding that the associates of George Rapp, in the original agreement of 1805, were named and ascertained by the deed of the 6th of May, 1815; and holding that the plaintiffs' objection as to perpetuities are unfounded."

18th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Twelfth. The Master erred in holding that the society as an unincorporated association had a right to take personal property."

19th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Thirteenth. The Master erred in holding that the plaintiffs' are barred by time, assuming the legal inability of this society as an unincorporated association to take personal property."

20th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fourteenth. The Master erred in assuming that there was no evidence of a conveyance to George Rapp or Frederick Rapp of the funds of the old society, but that they were purchased from outside persons; and also in his conclusion that if the trust was void, that the plaintiffs' are not entitled to

it, but that the same would revert to the grantors or go to the grantee of the trust."

21st. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fifteenth. The Master erred in finding that the various agreements did not create a limited or base fee; and also erred in not holding that the said agreements did create a limited or base fee."

22nd. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Sixteenth. The Master erred in finding that no resulting trust existed."

23rd. The Court below further erred in overruling the following exception of the plaintiffs' to the Masters' report:

"Seventeenth. The Master erred in finding a sufficient and valuable consideration by the association to the members thereof for their interest in the property of the said association, because the said agreements disclosed a tenency in common in the property of an unincorporated association incapable of giving or receiving considerations as between the several tenants in common."

24th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Eighteenth. The Master erred in not holding that the scheme of the said association disclosed by its various agreements and its prevailing customs and methods is against public policy, and therefore should be wound up, and the several reliefs prayed for in said bill should be granted."

25th. The Court below further erred in overruling the fol-

lowing exception of the plaintiffs' to the Master's report:

"Nineteenth. The Master erred in finding that the Harmony Society has not been dissolved by the common consent of its members."

26th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Twentieth. The Master erred in finding that the Harmony Society had not dissolved by the abandonment of the purposes for which it had been founded."

27th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Twenty-first. The Master erred in finding that the abandonment of the purposes of the society to cause a dissolution, must be an abandonment by *all* of its members."

28th. (Not for argument).

29th. (Not for argument).

30th. (Not for argument).

31st. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Twenty-fifth. The Master erred in finding the election of Duss, Nicklaus and Fishern to the Board of Directors was regular and valid."

32nd. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Twenty-ninth. The Master erred in finding that Duss did not prevent the admission of new members, as alleged in the fourteenth paragraph of the bill and in not finding that the said Duss and his associates designedly permitted the membership

of the society to run down and diminish in order to vest the property of the society and the control thereof in himself and a few others under his control and dominion."

33rd. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirtieth. The Master erred in finding that the use of the funds of the society to the amount of over a million dollars was an authorized and proper application of said fund, and in finding that the same was not the result of a conspiracy between Duss, Hice and Reeves, as alleged by the 15th paragraph of the bill."

34th. (Not for argument.)

35th. (Not for argument.)

36th. (Not for argument.)

37th. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirty-fifth. The Master erred in not finding that the money represented by the foregoing mortgage was not raised for the purpose of raising money to induce members to retire, and that said money was so used; and in finding that the same was not borrowed for the purpose aforesaid."

38th. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirty-sixth. The Master erred in finding that Duss did not, as charged in the 19th paragraph of the bill, by artifice, misrepresentation, coercion and fraud, induce or force all the active and more intelligent members of the society to withdraw, and that he did not secretly and fraudulently appropriate several hundred thousand dollars of the moneys of

the society, and use it in getting rid of those members."

39th. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirty-seventh. The Master erred in finding that the payments to the retiring members were not made secretly, and that the same were within the powers of the trustees."

40th. The Court below further erred in overruling the following exception of the Plaintiff's to the Master's report:

"Thirty-eighth. The Master erred in finding that Duss protested against the withdrawal of the retiring members, and that the withdrawal of these members was not caused by any scheme or action of Duss, but by the filing of the Feucht bill against the society, and the actions of the plaintiffs in that bill prior to and after it was filed."

41st. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Thirty-ninth. The Master erred in not finding that the withdrawal of retiring members was caused by the offers of money made by Duss and by threats and coercions used by him."

42nd. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fortieth. The Master erred in finding that the averments of the 19th paragraph of the bill in regard to the election of women to the Board of Elders and the purpose for which the same was done was not sustained."

43rd. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

Forty-first. "The Master erred in sustaining the allegations contained in the 20th paragraph of the bill in relation to the conveyance to the Union Land Company."

44th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Forty-second. The Master erred in finding that the conveyance to the Union Land Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

45th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Forty-third. The Master erred in finding that said conveyance was within the powers and the authority of the trustees or the terms of the trust upon which they held the same."

46th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Forty-sixth. The Master erred in finding that the principle of equality and community of goods had not been abandoned, as charged in the 23rd paragraph of the bill."

47th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Forty-ninth. The Master erred in finding that

the doctrine and practice of celibacy had never been one of the essential principles or doctrines of the society."

48th. The Court below further erred in overruling the following exception of the plaintiffs' to the Master's report:

"Fiftieth. The Master erred in treating the various acts alleged by plaintiffs as constituting dissolution of the society separately and in not considering and passing upon the united effect of all said acts and matters, and in failing to find that in the same when taken collectively, would constitute a dissolution of the society or an abandonment of the purpose of the society."

ARGUMENT.

The questions involved in this cause are based to a large extent upon certain instruments of writing in evidence as follows, viz.:

George Rapp, and with him certain associates, left the Kingdom of Wurtemberg about 1803, and acquired seven thousand acres of land in Butler County, Pennsylvania, and there established a town called Harmony.

The first of the written instruments referred to is dated February 15, 1805, and was executed there. It is printed as "Exhibit A," page 47, and also in the Master's Report, page 128, Vol. 1, of the Record.

This instrument was one of adoption of new members. The community is described therein as "*George Rapp and his associates.*"

In the year 1814 "George Rapp and his associates" removed to Posey County, Indiana, and there established a town called Harmony; and in the year 1815 sold the Butler lands and the town for $100,000.

Another instrument of adoption was entered into, dated January 21, 1821, in Indiana. It is "Exhibit B," printed on page 50, and in the Master's Report, p. 131, Vol. 1. The parties therein are "*George Rapp and his associates*" of the second part, and others, signers of the first part. It is called an "*Agreement, treaty and alliance.*"

In the year 1825 George Rapp and his associates acquired three thousand acres of land on the Ohio River, in Beaver County, Pennsylvania, about eighteen miles below the City of Pittsburgh, and there established the Town of Economy, laid out streets, built a "great house" for Rapp and a large number of substantial brick houses, cultivated farms, established vineyards, made wine, erected woolen mills, flour mills, silk factory and other industries, to employ the labor of members, and to support, maintain and clothe themselves. The title to the lands was taken in (M. R. 142) the name of Frederick Rapp, who on July 20, 1825, executed a declaration of trust that all the property, real, personal and mixed, which then was or which might afterward come into his possession, was the property of the society. In this instrument the name "Harmonie Society" is for the first time used, in a descriptive and informal way.

Another instrument dated March 9th, 1827, was executed at Economy, and is "Exhibit C," p. 52 (Vol. I.), and is printed in the Master's Report, p. 133.

The preamble recites the formation of a community by George Rapp and many others; recites the purposes for its formation and its principles, and also the necessity existing that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual should be defined.

Thereupon, upon the one part, the signers, citizens of Beaver County, agree with "*George Rapp and his associates*" of the other part upon certain things therein mentioned.

On the 31st day of October, 1836, another instrument was executed. It is "Exhibit D," p. 87, Master's Report 139, Vol. I. For the first time the name "*Harmony Society*" is formally used. The whole purpose of this instrument is to revoke the 6th article of the articles of March 9, 1827, providing for restitution of property to retiring members.

This system of restitution is denounced as a departure from the great principle of a community of goods; the articles of 1836, by way of substitution, convert all the property of the society, real, personal and mixed, and afterwards to be acquired, "now and forever," into "joint and indivisible stock." In no other respect are the prior articles affected.

Upon this agreement the plaintiffs rely, as vesting in the members of 1836 and those becoming members, at subsequent dates, the reversion of property upon the dissolution from any cause of the Harmony Society.

In 1834 Frederick Rapp, the Trustee, died, and an instrument dated July 5, 1834, was executed, reciting his death, and constituting George Rapp the general agent of the society, and defining his powers and declaring his trust for the society.

In pursuance of this instrument, George Rapp appointed R. L. Baker and Jacob Henrici general agents and and trustees for the society.

This instrument is printed in the Master's Report, pp. 143-144-145, Vol. I., and is "Exhibit No. 85."

George Rapp died in 1847, and in consequence of his death an instrument was executed dated August 12, 1847, (Master's Report, p. 146, Exhibit 83; also as Exhibit 'E,' p. 61), expressly re-establishing the provisions of the articles of the 9th of March, 1827, and of 31st of October, 1836, and providing for a management of affairs by a board of nine elders and a board of two trustees,—all being named therein; the Board of Elders to be self-perpetuating; the trustees to be members of the Board of Elders. The trusts for the society are continued.

The next articles in point of date are those of April 30, 1890. ("Exhibit F," p. 67, Vol. I.) They purport to be ratification of acts done by the elders and trustees, and reaffirm the articles of 1847.

There are two additional articles of later date; the first is dated Dec. 20, 1892, intending to give to the trustees power to borrow money. ("Exhibit G," p. 74, Master's Report, p. 437; and the second is dated April 11, 1894, ("Exhibit 80," Master's Rep., 223, Vol. 1.) and intending to authorize sale of all the society property to the Union Land Company,

To the articles of 1827 there are 666 signatures (Master's Rep., 133); to those of 1836 there are 424 signatures (p. 139); to those of 1847 there are 288 signatures (p. 146); those of 1890, 45 signatures (p. 204); the articles of 1892, 33 signatures (p. 213); to the articles of 1894, 18, being all of the membership (p. 222).

The bill in this cause names all the then members, sixteen in all; the record, Dec. 5, 1898, suggests the death of seven of those,—leaving *then* nine members, of whom one or more may have since died.

There being no men left in sufficient numbers to serve, four women were added to the Board of Elders.

Duss (Vol. 2, p. 293) gave the names of the Board of Elders:

Fredericka Muntz,
Regina Lautenslager,
Maria Deim,
Karolina Molt,
Susie C. Duss,
Franz Gilliman,
Conrad Hermansdoerfer,
G. Reithmuller,
John S. Duss.

Of these Reithmuller, Hermansdoerfer, Maria Deim and Regina Lautenslager are dead.

This society so-called is now so far reduced in numbers as therefore to be incapable of fulfilling the purposes and principles of a communistic society and a patriarchal government, especially as all the members now living are required for governing, and there remain no members to be governed.

I

Master's Positions.

The Master Holds:

1st. That the society was legally constituted; is a legal organization and the trusts created for it are valid.

2nd. That the plaintiffs have no such proprietary right or interest in the property and assets of the society as entitles them upon dissolution to any part or share therein, or as entitles them to the relief prayed for.

3rd. That the society has not been dissolved by common consent, or by an abandonment of the purposes for which it was formed, or by any act or acts of administration.

4th. That the property, real and personal, is held in trust for the society as a survivorship for the benefit and use of the society as such; that the trust is a valid one and not in violation of the rule against perpetuities.

In discussing the question of dissolution and of abandonment, he holds:

1st. That a dissolution by consent must be with the consent of *all* the members.

2nd. That the dissolution by reason of abandonment of principles and purposes must be an abandonment by *all* the members.

The Master is sustained in all his findings of law and fact by the Court below.

In addition, however, the Court says:

> "It is not necessary nor would it be proper for the "Court to express any opinion as to what would be the "legal status and the ultimate disposition of the prop-"erty of the Harmony Society were its existence ter-"minated by the death of all its members, or were a "dissolution otherwise effected. • No such questions are "before us—we are not dealing with the assets of a de-"funct or dissolved association."

It is, therefore, clearly admitted :

1st. That a trust exists for the benefit of the society.

2nd. That such trust is a surviving trust for the society *as a society.*

3rd That the ultimate destination of the property, in the event of the death of all the members, or a dissolution otherwise, is not determined.

4th. It is also clear that no title vests in the members as individuals. They may come, they may go or die, and the title in the trust is in the Harmony Society as a beneficiary.

And we are now confronted with these propositions as covered by our assignments of error.

In support of the assignments, so far as they relate to these questions, we present the following considerations:

We propose to argue:

1st. That the Harmony Society is an association, in its purposes and form of government, obnoxious to the policy of the law.

2nd. That it is incapable of holding lands or personalty, either directly or as the beneficiary of a trust.

3rd. That the trusts create a perpetuity for the benefit of an unincorporated association, having neither religious, charitable, literary or scientific purpose.

4th. That even if the association were a valid and legal organization, yet the purposes and principles of the society have been abandoned, its scheme of government perverted, its property entirely taken from it, and that the affairs of the society have been put into liquidation.

That its affairs are now in the hands of one who seeks to be the sole survivor of the society and the sole successor to all its wealth, and who in pursuance of such purpose has diverted the money of the society to the purchase of the interests of many of the younger members whose prospects of survivorship apparently were menaces to his scheme of succession.

5th. That since 1836 all the then members and all successive members became and were equally interested in the *"joint and indivisible stock"* comprehending all of the property and funds of the Trust; that upon the failure of the trust for any reason or from any cause, the

terms of the trust making no provision over in such event, the property of the trust reverts by way of resulting trust to those equal owners of said "joint and indivisible stock"—those who are living, and the heirs and legal representatives of those who died in the society since 1836.

6th. That each of the plaintiffs is an heir and leggal representative of an ancestor dying in the society since 1836—such ancestor being by the agreement of 1836 an equal owner of said "joint and indivisible stock."

II
The Society an Illegal Association.

The Harmony Society through its whole existence comprehended two marked divisions or classes in the membership, viz.:

The Patriarch or Governor, who was the autocratic and sole Patriarch until his death in 1847, and

Members admitted to prescribed and limited privileges and unlimited duties and strict obedience. These latter never acquired a voice in the management of the affairs of the society or the selection of the Patriarch, manager or superintendent.

The same distinction marks the society since Aug. 12, 1847, when articles dated Aug. 12 of that year ("Exhibit E," p. 61 Master's Rep. 146) were entered into, devolving

all of the powers which George Rapp originally had upon a Board of Elders consisting of nine persons, whose names are therein given, and a Board of Trustees; and the then existing Trustees, Romelius L. Baker and Jacob Henrici were therein nominated Trustees.

All vacancies in the Eldership and in the Board of Trustees were to be filled by the Board of Elders, and the members of the society as such had no voice whatever. The Patriarchs were not bound to account, nor had the members the right to compel an accounting.

The articles of 1805 ("Exhibit A," p. 47), of the 20th of January, 1821 ("Exhibit B," p. 50), and the articles of March 9, 1827 ("Exhibit C," p. 52), are all articles of adoption, and set forth the terms upon which new applicants were admitted, their rights and their duties, and the covenants of "George Rapp and his associates" with them.

The articles of 1836 were declaratory of titles only, changing the pre-existing articles only so far as they provided for restitution of property contributed by retiring members.

Every contract prior to that of 1836 provided that in the event of withdrawal of contributing members, each member should be entitled to a restoration of his contribution, in three equal annual installments, without interest; but no member so withdrawing was entitled to compensation for labor performed by him as a member of the society.

The articles of 1836, "Exhibit D," p. 57, rescinded this feature of restitution. It declared that the principle of restitution, as embodied in the 6th article of the agreement of 1827, was a manifest departure from the "great principle of community of goods," and tended to foster and perpetuate a feeling of inequality; that it was one which could not now be enforced with fairness, inasmuch as all records and memorials of respective contributions up to 1818 had at that time been destroyed.

It was thereupon declared by Article 2nd (p. 59) that:

> "All the property of the society, real, personal "and mixed, in law or equity, and howsoever contrib- "uted or acquired, shall be deemed *now and forever, "joint and indivisible stock.* Each individual is to be "considered to have finally and irrevocably parted with "all his former contributions, whether in lands, goods, "money or labor; and the same rule shall apply to all "future contributions, whatever they may be."

The 3rd article provides that should any individual withdraw from the society, or depart this life, neither he in the one case, nor his representatives in the other,

> *"shall be entitled to demand an account of said "contributions, whether in land, goods, money or labor, "or to claim anything from the society as a matter of "right."*

Nothing that the Master has said bearing upon the question of plaintiff's claims, as based upon any of the articles prior to that of October 31, 1836, has any relevency to our contention. Our entire right is based upon the articles of 1836, whereby all the property of the society is merged into a "joint and indivisible stock," in which our ancestors dying in the society since 1836 were equally interested.

And our right is enforceable, because the trust upon which the same is held has failed.

Neither are we barred by the third article, for we do not "demand an account of" our contributions, nor do we claim anything from the *society* as a matter of right.

For the first time in the history of the society is now presented for adjudication a bill which declares the society dissolved, prays for a receiver and a distribution of its property because thereof. We deny the society's existence; it is not a party to the bill.

As the constitutions of the society do not provide a terminal period of its life, nor contemplate its death or make any provision for the distribution of its property in the event of its dissolution' it is evident:

That the last survivor is not entitled to take by reason of anything contained therein:

That the property so held in trust is not *"bona vacantia,"* and does not escheat, because the society is unincorporated.

And that therefore the property must go to those who are equally interested, under the articles of 1836, in the joint and indivisible stock therein created, as donors of that fund to the Trustees, to them who live and to the heirs and legal representatives of those who are dead.

While, however, we do not base our right of inheritance upon any contributions of our ancestors to the society, *prior to the articles of 1836*, yet it is important to consider those articles, in order to ascertain what the principles and purposes of the society were, and contined to be till its dissolution; its form of government; the nature and character of trusts created, their duration and the future disposition of the property controlled by said Trusts.

Nature and Character of the Trusts.

The articles of 1805, February 15, (p 47 "Exhibit A" vol. 1) provide for the delivering up of all the estates of members:

> "*To George Rapp and his associates* in Harmony, "Butler County, Pennsylvania, as a free gift or donation "*for the benefit and use of the community there* * * "

The articles of January 20, 1821 ("Exhibit B" p. 50) seem to have been drafted for new members.

The articles of March 20, 1827 ("Exhibit 6," p. 52) expresses the grant and conveyance of all the subscribers, property to:

> "*George Rapp and his associates" as a free gift "or donation for the benefit and use of the said associ-"ation or community.*"

The articles of 1836 ("Exhibit D" p. 57) seem to be directed wholly to the repeal of the restoration clause of the articles of 1827.

The Master finds (page 142) that prior to his death in 1834, Frederick Rapp, had been the business agent of the society;

That on July 5th, 1834 ("Exhibit 85") the members of the society executed a power of attorney to George Rapp, as general agent of the society in all its temporal affairs, with power to appoint agents under him—and that on the same day he appointed Baker and Henrici his substitutes.

This power is printed at length on page 142, &c.

The appointment of Baker and Henrici, by Rapp ("Exhibit" p. 145) expressly recites:

"The said R. L. Baker and Jacob Henrici shall "neither acquire nor claim any personal interest in the "present resources or future earnings of the said society "other than that of a member of the said society, agree- "ably to the plans and terms of the associations, *but "shall be considered as exercising the same trust men- "tioned in a declaration of trust signed by Frederick "Rapp on the 20th day of July 1828, and referred to "in the foregoing power of attorney to George Rapp.*"

In the power of attorney to George Rapp (p. 142), it is recited that Frederick Rapp was for a series of years the agent of the society,

"carrying on in his own name, all the external business "of said society, and taking to himself the titles to real "estate as well as the evidence of claims arising out of "the various transactions of said society;"

And that by an instrument dated July 20, 1825, he, the said Frederick, declared that all the property real, personal and mixed then or thereafter to come in enjoyment or title "*was and should be considered the property of the said society*" *in which he had no absolute interest whatever.*

Baker and Henrici as agents held the trust, under this appointment until the articles of August 12, 1847, when by their selection into the Board of Trustees, under those articles, they henceforth held and exercised the trust as a Board of Trustees. The cause of these articles of 1847, was the death of George Rapp, from whom Baker and Henrici held their appointment.

The 6th article of this agreement of 1847 (page 65) declares that all the property held now or subsequently acquired by the Trustees *should be deemed the common property of the society*, each trustee disclaiming all personal interest therein, other than as a member. And these trusts continue until the present day—the Trustees only changing.

The trusts are continued without change and are recognized by the articles of 1890 (67). 1892 (74) and 1894, (112).

The first of these is for *ratification*, the second, enlargement of the powers of *the Boards created by the articles of 1847*, and the last to authorize conveyance to the Union Company.

It is therefore evident that all the property—whether lands, goods, money or labor—of the society was for "*the use and benefit of the society*," and is held in trust for the "*use and benefit of the society*."

The Purposes of the Society.

The community was formed for the purpose of more efficiently carrying into effect a mode of life, founded upon the observance of certain principles and beliefs, and an internal government of its members in accordance therewith. To that end members originally made contributions of real and personal estate to George Rapp and his associates in varying proportions and contributed their labor for the common welfare.

Without the maintenance of these principles for an *object*, the reason for the society's formation and existence would disappear.

The trusts created and existing are inseparably connected with the purpose and principles of the society, and are held solely for the maintenance and advancement of the same.

What then are those principles? The article of 1805, and all subsequent articles speak of the society, as a society, or community of persons. There were many in numbers, strangers in blood, who were in sympathy with each other for a common object.

The Master has entitled the agreement of 1836, "Exhibit D," page 57 of the printed record, "*Supplementary articles* of 1836." It is *supplementary* to the agreement or treaty of the *9th of March, 1827*, ("Exhibit C," page 52) and amendatory thereof, *leaving the whole of the former in full force and effect*, except that it repeals the 6th clause relating to the restoration of contributions to withdrawing members, and adds *equality of ownership* of the property then converted into "joint and indivisible" stock.

The articles of 1836 are therefore to be read as though they contained all of the provisions of those of 1827, except the 6th clause.

And so read, they contain the constitution, principles, covenants, restrictions, duties, obligations, purposes and trusts of the Harmony Society, which continued as such until the present time, as the subsequent articles show.

The articles of August 14th, 1847 (page 61) in the first article (62)

> "solemnly recognizes, establish and continue the arti-
> "cles of our association (the sixth section excepted)
> "entered into * * on the *9th day of March, 1827*,
> "* * and the *supplement thereto adopted* * *
> "*on the 31st of October, 1836*, * * except so far
> "as the same are affected by the death of * *
> "George Rapp, or hereinafter altered or modified, and
> "to this extent we declare the said articles to remain in
> "full force."

And therefore the articles of 1827 and of 1836 are to be read into and form part of those of 1847, with the exceptions noted.

It will not be disputed and was not below that until the death of George Rapp, Rapp was and always had been the patriarch, *and that the system of government had been a patriarchy.*

But it was contended that the patriarchy was abolished by the articles of 1847, and in the substitution of a Board of Trustees and a Board of Elders provided for therein.

This view is wrong, for the following reasons:

The articles of *1827* were expressly made part of the articles of *1847*, and those articles expressly provide (p. 52) for "*the government of the patriarchal age*," otherwise it would be that the *moment of the execution* of the articles of 1847, the existence of a patriarchal government was *affirmed* as part of the constitution, and with the same breath it was *abolished*—a conclusion illogical, a result unwarranted.

Since there are no words of repeal or abolishment of that system in the articles of 1847, those articles must be construed so as to maintain that system. Thus, instead of a *single* patriarch the articles of 1847 provide for a *plural* patriarch, to be known as a "Board of Trustees" and as a "Board of Elders."

The powers conferred upon this dual patriarchy are as full, absolute and dominating as were ever held by any single patriarch at any period of the world; their orders were unappealable and uncontrolled, as a reference to articles 3rd (62) and articles 4th and 5th (64) disclose.

The Powers of the Elders Therein Recited Are:

1st. Exclusive regulation of all the interest of the society in temporal affairs;

To appoint and remove superintendents and give orders in business operations and see that members perform assigned duties;

2nd. To determine all disputes and misunderstandings; to advise and remove;

3rd. To admit new members and to expel, and new members shall so agree in writing;

4th. To establish regulations for the maintenance and improvement of morals and for instruction;

5th. To appoint spiritual leaders;

6th. Power to remove members of the Board, and of the Board of Trustees.

7th. *To fill all vacancies in the Board and in the Board of Trustees.*

The Trustees *as a Board*, take all titles in trust and are authorized to exercise all the powers given them as a Board—extreme and full as those powers are, *and are not held to any accounting.*

It is therefore evident that the members as such are distinct from these two boards and have no further lot or part in the society than what remains to them under the articles of 1827, viz (53):

To submit faithfully to the laws and regulations of the Society; to manifest a cheerful and ready obedience towards superintendents; to promote the interests and welfare of the community, by the labor of their hands.

And for this these members are to receive (54):

The privilege of being present at every religious meeting, and of *receiving all such instructions in church and school as may be reasonably required for their temporal good and for their eternal felicity;*

The necessaries of life, clothing, meat, drink, lodging, in health and strength, in sickness and infirmity, together with medicines, &c.

As between the plural patriarch consisting of the two boards as entities of the one part, and the members of the other, the *former have absolute* power, and the latter are serfs—in fact slaves, since these articles impose no temporal ending of servitude except by death.

These two Boards conjointly possess the fullest powers of a Patriarchy; The Trustees are members of the Board of Elders, and are removable by the latter.

The members as such have no vote; no power to change the personel of the Board; there is no terminal period to the life of the two Boards, which are self perpetuating. The Society is therefore not democratic; nor is it republican in form; it is inconsistant with any form of government other than a despotic patriarchy, with powers absolute over civil, religious, moral, social functions, and absolute control of labor of members.

And this patriarchy has never been subsequently changed.

The articles of 1890 ("Exhibit F," page 67) are only articles of ratification, and re-enact the articles of 1847.

The articles of 1892 (" Exhibit G," page 74) recognise the existing constitution, and add to the powers of the Trustee given by the articles of 1847, *the power to borrow, and to evidence written agreements in the name of both trustees by the act of one.*

The articles of 1894 ("Exhibit H," p. 112) *recognize the insolvency of* the society, *threatened suits*, and *the formation of the Union Company*, and authorizing a transfer of the property of the society to that corporation.

So that it abundantly appears that the constitution of 1836, except the 6th article, is the constitution of to-day; that the Patriarchy of Rapp has been succeeded by the Patriarchy of the two boards; and that no pretence has ever

been made in any article to destroy or impair the conditions, requirements, trusts and principles declared by the articles of 1836.

The principles and purposes of the society are to be found not only expressly recited in the agreements or articles, but also in the practices, laws and regulations imposed by the will of the Patriarch under the powers contained in the various articles.

Thus in Article 2nd of the agreement of 1805 (48) the incoming members pledged themselves jointly and severally to

> "submit to the *laws and regulations* of the *community*
> "*and to show due and ready obedience toward those*
> "appointed and chosen by the community as superin-
> "tendents in such a manner that not only we ourselves
> "endeavor by the labor of our hands to promote the
> "good and interest of the community, but also to hold
> "our children and families to do the same."

There are no provisons in these articles defining any right of control by the members. The *laws and regulations* were therefore made, promulgated and enforced as in a Patriarchy, by Rapp, who was then the Patriarch.

Thus we have a *Patriarchal* government, the maintenance of which is one of the purposes of the society; the *power of enactment* of *laws and regulations* binding upon members, and *enforcement* of the same; *ready obedience* thereto, and *labor of the hands* for the good and interest of the community by the members.

There can be no doubt that the widest distinction between the proprietaries and the members is as carefully provided for.

The articles of 1805, 1821 and 1827 recognize "*George Rapp and his associates*" as conceding, and the applicants accepting from them, *not* the full and equal share of power which Rapp and his associates possessed, but the limited rights therein prescribed by Rapp.

And this relation has never at any subsequent time been changed.

The governors are not required to account for their possessions, or the uses to which the trust properties and incomes have been applied; under these articles, no member as such has any standing in any Court to compel such accounting.

CELIBACY.

Celibacy, as early as 1806 or 1807, was ordained by the Patriarch under his power to *make laws and regulations.*

The answers admit the "practice" of celibacy since the date mentioned but deny that the observance of it was *essential to membership.* By the articles of 1805, no terms of membership are mentioned. Admissions were at the will of the Patriarch. It is also true that many married persons had been admitted, but it is also true that they ceased to cohabit as man and wife after admission.

It is also true that several children were born to members, but it does not appear that such children had been born of intercourse after their parents became members.

To the contrary, every case of retirement from membership figuring in the law cases had its origin in a desire to marry. The rule or law was rigidly enforced, and no marriage was permitted in the society.

In the Nachtrieb case [tried in the Court below and hereafter more fully considered) Justice Grier found as an *admitted fact that marriage* and *the sexual intercourse of married persons* were *prohibited* in the society.

Community of goods was recognized as an underlying principle in 1805. The contributions were absolute for the use of the community, reserving the right of restoration in the event of withdrawals.

Community of persons and goods logically demand celibacy as its foundation principle. Otherwise the laws of inheritance would prevent; there would be the inequalities arising from the prolific increase of some and the comparative barrenness of others. Family ties and the consequences arising therefrom would prove speedily destructive of the society.

So celibacy and the non-intercourse of married members constitute purposes of the community, in addition to the other features above noted.

COMMUNITY OF GOODS.

The preamble to the articles of 1827 (52) fully express the objects and purposes of the society:

> "Whereas, By the favor of Divine Providence, an "association, or community, has been formed by George "Rapp and many others, *upon the basis of Christian "Fellowship*, the principles of which being faithfully "derived from the *sacred scriptures*, include the *gov-"ernment of the patriarchal age, united to the com-"munity of property adopted in the days of the apos-"tles*, and wherein the single object sought is to ap-"proximate, so far as human imperfection may allow, "*to the fulfillment of the will of God*, by the exercises "of those affections, and the practice of those virtues " which are essential to the happiness of man in time "and throughout eternity."

Thus we have the fundamental principles of the Harmony Society as follows:

1. *Christian Fellowship*, including the government of the *patriarchal* age united to the *community of property adopted* in the days of *the apostles.*

2. The approximation as a single object of the society to the fulfillments of the Will of God by the exercise of affections and practice of those virtues essential to the happiness of man here and hereafter.

3. The belief in the Second Advent of Christ, the nearness of the millenium and the doctrine of celibracy, were all being preached and practiced.

The Master finds on page 234 of his Report that celibacy was *not one of the purposes of* the Society and was not requisite for admission to membership.

He is not sustained by a single competent witness; he is confronted by the admissions of the Answers of the continuing custom from the earliest days of the Society; also by the power to make and enforce rules and regulations; also by the logical necessity of communism. The adjudicated cases connected with the Economy Society recognize celibacy as a fundamental principle of the Harmony Society. In the Nachtrieb case the depositions of record declared in the Court below, made by the members in 1847 celibacy is an established principle.

"Community of goods," as adopted in the days of the Apostiles, implied numbers.

At the ascension of our Saviour the number of disciples was about one hundred and twenty (Acts. ch.1, verse 15). And on the day of Pentecost there were added unto them about three thousand souls. (Acts 11, ch., verse 41).

Acts Chapter IV.

"32. And the multitude of them that believed "were of one heart and of one soul; neither said any "of them that ought of the things which he possessed "was his own; but they had all things in common."

"34. Neither was there any among them that "lacked; for as many as were possessors of lands "or houses sold them, and brought the prices of the "things that were sold."

"35. And laid them down at the Apostle's feet; "and distribution was made unto every man according "as he had need."

The definition of a "Community," as given by Webster in the latest edition, is as follows:

"A *body* of *people* having common rights, privi- "leges or interests, or living in the same place, under "the same laws and regulations, as a community of "monks."

A "Community" is distinct from the idea of *family;* the word necessarily implies the voluntary association of those who are under no family relation, but who have united in a common scheme of living, acting and government.

"Communism" is defined to be "the re-organiza- "tion of society, or the doctrine that it shall be re-or- "ganized by regulating property, industries and the "sources of livelihood, and also the domestic relations "and social morals of mankind. Socialism is especially "the doctrine of a community of property, or the reg- "ulation of individual rights and property."

Sanford's Cyclopedia of Religious Knowledge.

"Community of goods, the holding of goods, in "common, implying common ownership and common "use and enjoyment, but not in law, the right of par- "tition or severance."

Century.

"Communism, in its ordinary signification, is a "system or form of common life, in which the right of "private or *family property* is abolished by law, mu- "tual consent, or vow. To this community of goods "may be added the disappearance of *family life.*

Woolsey, Communionism and Socialism, Page 1.

Society Against Public Policy.

The society having its existence for the maintenance of these principles and purposes, is *obnoxious to the policy of the law;* and a trust to support and maintain them, *is for that reason void;* and the property held therefore passes by way of resulting trust to the classes hereinbefore specified.

In the first place, the jurisdiction of the Patriarchy extends to municipal control, in a manner vitally different and antagonistic from the constitutional system of the State respecting communities. Thus, the exercise of the franchise; of the right of naturalization; of participation in national, state and local affairs, and of the right of a voice in the periodical election of municipal officers,-- indeed, all civil rights is taken away from the individual and is vested in the Patriarch. All individual rights are merged into the community.

As there can be no *individual* wealth, there can be no individual contracting; nor can there be any executionary response for individual liabilities. All the private property which might result from individual labor is vested in the community, and the member is left for protection to the will of the Patriarch.

The most solemn obligations of civil duty of the individual, is controlled by the will and regulation of the Patriarch.

The scheme involves a system of labor which, if successfully carried out, involves a disastrous competition

against free labor; for the member is to work without payment, beyond his lodging board and maintenance. Its effect, if practiced to the full extent, is as disastrous to free labor as negro slavery proved to be.

The members are concreted into an individual designated as a "Community," and hence they are not equal before the law; nor are they free, nor does their situation at all bring them within the declarations which are the foundations of the Government.

As the constitutions of the society make no provisions for a termination of its life, it follows that if the scheme should for long periods prove successful, the society would absorb to itself vast amounts of money withdrawn from the community at large, and held as for a perpetual life, thus exempting itself from the common lot of individuals in the event of death, by way of distribution among those entitled: a defeat of collateral inheritance taxes, and all the other duties and successions and obligations of the ordinary citizen.

The inevitable result of the scheme is the aggrandizement of those in power, and the debasement of the membership in ordinary.

Judge Grier in the Nachtrieb case hereinbefore referred to describes the system as an

"isolated condition of a community whose moral and intel-
"lectual energies are studiously kept in a state of torpor
"and inertness; with undefined social rights, and an ad-
"ministrative power limited by no written rules, and with
"matrimonial restrictions contrary to the policy of the law."

A community of persons, isolated and differentiated in all the functions of civil life, is against the policy of the law; the doctrine and practice of celibacy and non-intercourse of married persons are against the policy of the law; community of goods is socialistic and antagonistic to the system of distribution of estates and is against the policy of the law.

At the time of the inception of this association the laws of Pennsylvania did not recognize the puposes and principles which underlie its existence as proper to be enfranchised with corporate powers.

When the system of incorporation was extended by the corporation laws of 1864 to almost every form of association, the Legislature did not deem it proper to extend its franchise to such a corporation.

And so, also, the corporation laws of 1874, broad and full as they are, provide no clause or paragraph under which such an association could claim corporate privileges and franchises.

Fancy an application for a charter to the Legislature for this association, asking corporate powers to establish a patriarchal municipality with community of property, a membership of serfs bound to lifelong labor without recompense, except as to bare existence, and barred from rebellion by forfeiture of the proceeds of that labor; withdrawing estates from recognized political control, forbidding matrimony, defeating the laws of inheritance; for a society for perpetual accumulations in itself as an entity, a power of making laws and regulations, a tying up of property forever, and an absolute taking away of the individuation of its members!

Can it be, then, in these circumstances that individuals can by their own volition establish a community with all the attributes of corporate power, for such purposes, and successfully maintain that Courts shall recognize the monstrosity thus conceived and born?

Under the constitutions, or whatever the agreements may be called, the individual members had no assignable shares of stock; they are mere incidents; they live, they die, the society goes on. It concentrates in itself the unlimited wealth which individual contributions and individual labor pour into its coffers, so that it may well be, should

the scheme be continuously successful and should the society have the perpetual life contemplated, its numbers would be overflowing, its wealth enormous, its members, deprived of matrimony, would cease to add to the population of the state; its enslaved labor be a successful competitor of paid labor, and its membership an assemblage of monks and nuns.

And for the foregoing and many kindred reasons, which need not be elaborated, the trust, however validly constituted itself, must be defeated because of the badness of the purposes for the benefit, support and maintenance of which it was created.

III

The Society Not Competent to Hold Property.

Conceding for the sake of the argument that the principles, purposes and scheme of government of the Harmony Society are not against public policy, and that they are unobjectionable in themselves, yet we contend:

First. That the Harmony Society is an unincorporated association: that it is an organization neither for a religious, charitable, literary or scientific purpose, and therefore it is incapable of holding property in its own name.

Second. That a trust created for its benefit and use is invalid.

Even if it be held that the Harmony Society can validly hold property in its own name, or through trustees for its use and benefit, we contend:

That the trusts for this society violate the rule against perpetuities and are therefore void.

If it should be held that the rule against perpetuities has not been so violated we then contend:

First. That the grants are in the nature of base or conditional fees, reverting to the donors and their heirs upon the failure of the purposes of the trust by way of resulting trust.

Second. That the society has come to an end and no longer lives, and therefore the properties covered by the trust reverts to the donors, or their heirs or legal representatives.

The Master's Positions Are:

1st. It is conceded that the society is an unincorporated association:

2nd. But that the trusts, while they are for the "benefit and use of the community," do not designate any particular purpose to which the property may be devoted;

3rd. That the property may be held indefinitely, but if of advantage to the society, it may be sold:

4th. And therefore the trusts do not violate the rule against perpetuities:

5th. That notwithstanding its want of incorporation the society may be *cestui que* trust of personal property:

6th. That while it cannot take title to real property in its society name, property may be held for its use and benefit by Trustees and its right to the enjoyment of property be secured in that way.

7th. That the trusts do not constitute an estate upon a condition subsequent, or a base fee, because the

words in the conveyance do not of themselves create a condition, nor are so connected with the grant as to qualify or restrain it.

As we have said, it is conceded that the Harmony Society is an unincorporated association.

It is also conceded that the terms of the trust are absolute; the uses of the property are not limited to any religious, charitable, literary or scientific purpose.

The only limitation expressed in the terms of the trust is "*for the use and benefit of the society.*" That, of course, means for the maintenance, support and continuance of a community organized for the purposes set out in the constitutions.

None of these purposes come within the class of purposes which are defined by the law to render an unincorporated association capable of holding property through Trustees. They are neither religious, charitable, literary or scientific purposes.

Neither do any of the conveyances denote that the property held in trust is to be donated to a religious, charitable, literary or scientific purpose.

In the case of *Kain vs. Gibboney*, 101 United States Rep. 362, *Strong, J.*, delivering the opinion, says in discussing the will in that case:

> "A 'charity' is generally defined as a 'gift for a "public use.' Such is its legal meaning, and here the "beneficial interest is given to a religious community.

In the case at bar, the purposes of the Harmony Society are defined once and forever since by the articles of 1827, and those purposes are :

> "Whereas, By the favor of Divine Providence, an "association or community has been formed by George "Rapp and many others, upon the basis of Christian "Fellowship, the principles of which being faithfully "derived from the sacred scriptures, include the gov-

"ernment of the patriarchial age, united to the com-
"munity of property, adopted in the days of the
"apostles, and wherein the single object sought is to
"approximate, so far as human imperfection may allow,
"the fulfilment of the law of God, by the exercises of
"those affections and the practice of those virtues
"which are essential to the happiness of man in time
"and throughout eternity."

Then follow the mode of government, the gift of lands, tenements, goods, chattels, money or debts due, belonging to the member, in possession, or in remainder, or in reversion, or in expectancy as a free gift or donation "*for the benefit and use of the said association or community.*

The community is simply communistic, where the members, distinguished from the Patriarch, or Patriarchy—are serfs; trading their labor for a bare maintenance, by virtue of a covenant which could never be enforced against the community as an entity; where the sole power is vested in the government over body, raiment, lodging, food, by-laws and regulations not defined nor limited by any fundamental limitation—and includes the power of expulsion.

It is invariably held that an unincorporated association is incapable of taking by gift or grant.

Town of Paulet vs. Clark, 9 Cranch, 292.
Vidall vs. Girard, 2 Howard, 127.
Ingles vs. Trustees of Snug Harbor, 3 Peters, 144.
Ould vs. Washington Hospital, 95 U. S. 303.

The gifts or grants in the case at bar contained no direction for a future incorporation, and therefore is not saved by the case of *Ingles vs. Trustees of Snug Harbor* (3 Peters 144), in which case the devise was to Trustees to erect a Hospital, and directed the Trustees to apply to the Legisla-

ture for an act of incorporation, which was done. The Court held the devise good, because of that, and distinguishes the case of the *Baptist Association vs. Hart's executors* (4 Wheaton, 27), on that ground.

In the case just cited from Wheaton, the Court held—"That the association not being incoporated at the testator's decease could not take this as a society."

In the *Girard will case* (2 Howard, 127), the Court said:

"The donees were an unincorporated association, which had no legal capacity to take and hold the donation in succession for the purpose of the trust."

A *grant to Trustees* for a mere voluntary association is void.

Hornbeck vs. Westbrook, 9 Johnson, 73.
Jackson vs. Cory, 8 Johnson, 385.
Sloan vs. McConahey, 4 Ohio, 157.
German Association vs. Scholler, 10 Minn. 331.
Thomas vs. Marshfield, 10 Pickering. 364.
Sanderson vs. White, 18 Pickering 328.

This doctrine applies with full force where the gift is wholly of personal estate.

Norice vs. Bishop of Durham, 10 Vesey (1805).
1 *Ames on Trusts*, 214.

We submit that under the authorities cited, the trusts sought to be created are void, and that the property reverts to all who are within ownership and entitled as inheritors of those members who have died in the society since 1836.

The Master cites, (p. 187) several authorities, which it is claimed, sustain his positions, that

> "Although a voluntary, unincorporated association "cannot take title to real property in their society name, "as they are not in law recognized as persons, it may "be held for their use and benefit by Trustees, and "their right to the enjoyment of the property be se- "cured in that way."

It will be found upon examination, that not one of them, deals with an unincorporated associations, having no religious, charitable, literary or scientific purpose. And therefore do not apply to the case at bar.

IV.

The grants create a Perpetuity.

It is also evident—without again quoting the articles themselves—that the community has no fixed period of life. So far as the articles are concerned, the scheme of the society contemplates *perpetual* life. Its death, winding up, insolvency, dissolution from any cause, are never thought of, and are never mentioned, or provided for.

The trusts created are to endure perpetually coincident with the perpetual life of the society; the titles vested are therefore conclusively for a period beyond a life or lives in being and twenty-one years thereafter, and thus they do offend against the rule against the perpetuities.

The Master's contention is that as the gifts were absolute, there was the power of sale in the Trustees, and that therefore there was no perpetuity. But the argument overlooks the vital fact that the proceeds of such sales are to be held upon the same trusts as were the properties sold. The power of sale is not given to *terminate*, but to continue and benefit the community.

It is not the *power* of *sale*, but *the period of distribution*, which decides whether a perpetuity has been created. The suspension of the power to alienate the subject of a trust is not relieved against by a power to exchange for other property to be held on the same trust, or to sell it and reinvest the proceeds to be held on the same trust.

The only power of sale is given by Article 5th of the Articles of August 12th, 1847, ("Exhibit E," page 61), and is part of the powers given to the Board of Trustees in the management of the affairs of the society.

The next article (6th) expressly declares:

> "That all the property, real, personal and mixed, "which *now or hereafter* shall be held or acquired by "any Trustee or Trustees, or persons under them, is "and shall be deemed the common property of said "society" * * * according to the articles of asso-"ciation re-established and continued, and according "to the present agreement."

If the Master be right, a sale of trust property defeats the trust and the proceeds of the sale are not bound by the trust and the express provisions of the articles of 1847 are nullified.

Again the Master finds—and is therein sustained by the Court below—that the trusts created are not trusts for the *members* of the society, *but for the society itself as a society.* Therefore, members may be admitted; they may die; they may be expelled; yet the society goes on, and the trusts are undisturbed.

We urge that the trusts for this society are unprotected by incorporation, by any of the purposes which protect an unincorporated association; that they are not based

on an anticipated corporation, and that, therefore, the grant being in fee, the accretions cumulative, without limit, the trusts violate the rule against perpetuties, and are void.

That the properties, real and personal, covered thereby, therefore, revert by way of resulting trust to the donors, their heirs or legal representatives.

The third paragraph of Article 5th of the agreement of August 12. 1847 (M. R. 149). authorizes the trustees to purchase and sell real estate, and to sell all of the lands now or hereafter belonging to the society, but expressly provides "that the proceeds of all such sales *shall be held in trust for the society.*

It is apparent that if the society continues to live, as it has already for so many years, the trust of the titles, or the proceeds, will continue to live in the name of its Trustees. Even if the real estate were sold, the proceeds of that real estate remains land, and is to be treated as land.

So far as the personal property. the *profits* and accretions therefrom and from the labor of members are concerned, it becomes part of the capital of the community, necessarily, because there are no stockholders among whom they could be divided. Hence those accumulations are perpetual, and are in violation of the rule against perpetuties.

We earnestly urge upon the Court that the property held by these Trustees, under the necessary construction of the articles, is a trust for the society as long as it remains a society, and upon its death that it shall revert to the donors, their heirs and legal representatives.

That the particular estate or use for the society cannot be broken or defeated by the society, for it has no control under the articles over the titles, which are inflexibly fixed in the Trustees; 1st, for the society, 2nd, when the society ceases to be a society, then for the donors as aforesaid.

The society is the beneficiary for its life only. It has no immediate right to become the present absolute owner of the trust properties.

> "A perfect definition of a perpetuity has not been "given, and the nearest approach to it is found in "Lewis on Perpetuities, ch. 12, where it is said to be a "future limitation, whether executory or by way of re- "mainder; and of real or personal property; which is "not to vest till after the expiration of, or which will "not necessarily vest within the period prescribed by "law for the creation of future estates, and which is "not destructable by the person for the time being en- "titled to the property subject to the future limitation, "except with the concurrence of the person interested "in the contingent event."
>
> *Hilliard vs. Miller*, 10th Barr, 334.

If it is conceded that the trust estate may continue for more than a life now in being and twenty-one years; and if it be conceded, as we think it must, that the Harmony Society had no power to convert its interests into an absolute estate, than the definition prevails, and we have here estates void for perpetuity.

In *Niefflin's Appeal*, 121, Pa. State, 205, the life tenant had a power of sale in fee simple in her lifetime, by which she could convert her limited estate into an absolute estate. It was held *that that power* defeated the rule against perpetuities. She did convey and she had the right to apply the purchase money as she saw fit.

Hare J. in the Court below, C. P., No. 4, Philadelphia, so holding, says, among other things:

> "If this inference is just, she had an immediate "right to become the present absolute owner * * "she could undeniably have vested an absolute interest "in the buyer, and so push the property beyond the "scope of a rule which only applies where the holder's

"estate is indestructible. *A power to sell, and re-in-*
"*vest the purchase money for the same uses would*
"*stand on a different footing.* * * *

The decree of the lower court was affirmed. Justice Green in that opinion, cites the following from Gray's Work on Perpetuities, Section 526.

"And if a man who has a vested limited interest
"in property has the *present unconditional* right to
"turn that limited interest into an absolute interest,
"and thus to acquire the *present unconditioned* abso-
"lute interest, he is regarded by the rule against per-
"petuities as already having such interest. * * *
"*There must be a person with a vested limited in-*
"*terest who has the immediate right to become the pres-*
"*ent absolute owner.*"

Where, then, will be found any immediate right in the Harmony Society to become the present absolute owner?

And where can be found in the Trustee any power to absolve the proceeds of the Trust real estate from the trust for the life of the Society?

It is held In *Re Walkerly's Est.*, 41 Pacific Rep., cited in American Digest for 1896, page 772, and 108 Cal. 627, cited in American Digest, page 4249, paragraph 3. that "though a devise in trust allows the trustee *to sell the property at any time, still it being provided that the trustees shall hold and invest the proceeds until distribution, which is not to be made until a definite time,* the perpetuity is created under the Civil Code, Sec. 771, which declares that the suspension of all power to alienate the subject of a trust *other than power to exchange it for other property to be held on the same trust, or to sell it and reinvest the proceeds,* to be held on the same trust, is a suspension of the power of alienation, within the inhibition of Sec. 715.

It is submitted that such is the common law rule, namely, that where there is a trust created or a restraint of alienation which would bring the trust within the rule against perpetuity, *that the mere power to sell and change investments, the proceeds to be held upon the same trust does not take it out of the inhibition of the statute.*

It was contended below by the learned counsel for the defendants that under the articles of 1847, the Trustees have power to sell all the property the title to which they hold in trust—and that, therefore, these articles, as the others, are no restraint upon alienation, and do not create a perpetuity. Yet if the Trustees do sell, it is only for the purpose of exchange, and the substituted property is to be held by them on the same trusts.

And so it is that all the property, original or substituted is for trusts which may continue forever, and the corpus is to be never diverted from the trust, so far as the articles provide.

And this society is unincorporated, and is for neither a religious, charitable, literary or scientific purpose.

In the case of *Barnes vs. Barnes*, 26 Maryland 171–172, the devise was in trust for children and their heirs. The Court held that no question is presented as to the future vesting of an executory estate, in order to determine the validity of the preceding one; but *simply* whether the trusts of the will require in their execution a longer period than that prescribed by the rule against perpetuities, and therefore render the property devised to the Trustees inalienable during that time. If so, the law denounces the devise in trust as a perpetuity and declares it void.

And the devise was held to violate the rule.

It seems a weak and insufficient distinction to say that the power to sell particular properties by a trustee, in aid of the trust, avoids the rule, when the corpus of the whole

remains to uphold and maintain a trust for a period of time which the rule prohibits.

Neither, in the event of this trust being held violative of the rule, would the trustees hold the title cleared of the trusts.

In the case at bar, the society itself in 1836, held the property; as donors declared that the property should be held by the society; constituted themselves as donees of the joint and individible stock; the titles are held by agents, managers or trustees, and were so taken permeated with the trusts so created. The case differs radically from those wherein the donor is a stranger, creating a trust for a third party, between whom there was and could be no privity.

V

The Grant Conveys a Limited or Base Fee.

Assuming for the present that the Trusts are valid, that the Harmony Society is in law a competent taker, then the grants are in the nature of a base or conditional or determinable fee, and upon the failure of the purpose for which the grant was made or the Trusts created by dissolution or otherwise, then the property reverts, by way of resulting Trust, to the donors and their heirs or legal representatives.

The grants of the real estate purport to convey a fee simple; the title to the personal estate is absolute.

The Trust covering them all is for the use and benefit of the society.

The condition, therefore, is, that when the society reaches the end of its existence, the purpose for which the grant was made and the trust created having failed, the property necessarily reverts to the donors and their heirs or legal representatives.

There is no terminal period fixed for the life of the society; there is no joint tenancy with right of survivorship or tontine scheme for the individual members; the property cannot vest in the Trustees divested of the Trust, nor can the fee simple float around without a taker, on the happening of the condition. There is, therefore, no place for it to go, unless it escheats—which it cannot do, so long as there are persons competent to take—except to the donors or their heirs or legal representatives, by way of resulting Trust.

The court sustains the Master in holding that the Trust is for the society as a society. Therefore, it is not for individual members as members. The society as such is absolutely distinct from its members as such. The latter die and new members are admitted, and none of them at any time have title to the property.

In the event of the dissolution of the society, those who are then members share proportionally, not because they are interested as *grantees*, but because by the articles of 1836, they being equally interested in the "joint and indivisible stock," which comprehends all the property of the society, then possessed or afterwards acquired, are *grantors* or *donors* of the Trust property, and *so* share proportionally only by way of resulting Trust, because the grant was conditional upon the life of the society.

We quote the terms of the Trusts as given in various articles.

July 20, 1825 (M. R. 142), Frederick Rapp under his hand and seal,

> "Solemnly and irrevocably declared that all the "property, real, personal and mixed, which then was or

"hereafter might be in his possession or enjoyment, or "title to which he held or might hereafter hold, was and "should be considered the property of the said society" "in which he, the said Frederick had no absolute inter- "est whatever."

July 5th, 1834, (M. R. p. 145) George Rapp, in pursuance of authority to appoint agents and trustees under him, given him by article of the same date, executed the following instrument:

"By virtue of the authority in the fourth article of "the foregoing power of attorney, I do appoint and "substitute in my place and stead, Romelius L. Baker "and Jacob Henrici, of Economy, Beaver County, Penn- "sylvania, to act as general agents of the Harmonie So- "ciety aforesaid, jointly and severally in my name, and "for the use of the said society to do and perform all "acts and things which as the general agent of said "society, I am authorized to do. It being distinctly "understood, however, that in accepting and perfo:m- "ing the office and business of general agents of the "said society, the said R. L. Baker and Jacob Henrici "shall neither acquire nor claim any personal interest "in the present resources or future earnings of the said "society other than that of a member of the said so- "ciety, agreeably to the plans and terms of the associa- "tion, but shall be considered as exercising the same "trust mentioned in a declaration of trust signed by "Frederick Rapp, on the 30th day of July, 1825, and "referred to in the foregoing power of attorney to "George Rapp.

"Witness my hand and seal this fifth day of July, "A. D. eighteen hundred and thirty-four."

August 12, 1847 (M. R. 150), after providing that the "powers hereby vested in the said Trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing in the name of the late Frederick Rapp, the said George Rapp or in any other name whatsoever," contains the following:

"Article 6th. It is hereby distinctly and absolutely declared and provided that all the property, "real, personal and mixed, which, now or hereafter "shall be held or acquired by any Trustee or Trustees, "or person under them, is and shall be deemed the "common property of said society, and each trustee "now or hereafter appointed hereby disclaims all "personal interest in the present resources and future "earnings of the society other than that of a member "thereof, according to the articles of association "hereby re-established and continued, and according "to the present agreement."

It will be remembered that the Board of Trustees are also members of the Board of Elders, all of whom must be members of the society.

When the purposes cease, the objects for which they were given no longer exist, the maintenance of the principles contemplated are abandoned, then the grants terminate and the property reverts to the grantors and their heirs.

If, therefore, the system of Patriarchal government is abandoned; if the communistic scheme has been subverted and a capitalistic scheme substituted; if the religious beliefs have been departed from; if all that made the society distinctive disappeared, if it has become a trading community; if it is a transgressor of the laws; if it is insolvent; had gone into a process of liquidation; if it had parted with the control of all its property; if it had abandoned the form of management of even the articles of 1847; if its "joint and indivisible stock" has been perverted into outside adventures, and perverted to the purchase of interests of members; if the trustees have schemed to prevent the admission of new members, to deplete existing membership, to secure survivorship; if after covering its property with mortgages it has made conveyance of every foot of land, every asset, every means of living, without the owner-

ship of a roof to cover the head of one of its members, and taken to itself the shares of a trading corporation, then we confidently say, that the purposes for which the grants were made have entirely ceased and failed, and under the authorities must revert to the original grantors or their heirs.

In the case of Slagel vs. Lauer, 148 Pa. St., 236. Plaintiff's ancestor conveyed for a money consideration, a strip of land to the Commissioner of Berke County, to and for the use, intent and purposes following—to be forever hereafter unbuilt on, in order to prevent prisoners making escape by reason of contiguous buildings. The jail in 1849 was removed more than one mile from its old location.

The question was whether on the cessation of the use of the land for the purpose of the jail, it reverted to the grantor's heir. And it held it did.

The Court say:

> "It must not be forgotten that such a fee is never-
> "theless a fee simple because it may last forever in a
> "man and his heirs, the duration depending upon the
> "concurrence of collateral circumstances which qualify
> "or debase the purity of the grant; 2 Black. Com. page
> "109. The *qualification must be found in the instru-*
> "*ment itself.* * * But no especial or technical
> "words are required to establish it * * What is
> "needed is that the deed on its face contain a reserva-
> "tion or declare a specific purpose for which the land
> "was conveyed and from which the reservation may be
> "implied: *Calon J.*, in *Adams Co. vs. Logan Co.*, 11
> "Ill, 336.

The Court then distinguishes certain cases in which the grant was for purposes in which counties usually acquire land.

And on page 244, distinguishes those cases and decisions which relate to the construction of a deed as conveying an estate on *condition subsequent*, and deny that effect to a recital that the grant is upon a certain consideration, or to

a collateral covenant—And says: "The purpose here is not recited as part of the consideration, nor is its observance collaterally covenanted. Nor is the estate here granted one upon condition."

Again: "Of course upon the determination of a base fee, the property reverts to the grantor: 2 *Black Com.* pages 109-110; without any claim or act on his part where it is determinable by limitation * * In the meanwhile the estate is out of him, and all that remains to him is the mere possibility of reverter: 4 *Kent, Comms.* page 10. *Yet this mere possibility is capable of transmission* to his grantees and will pass to them under a conveyance of the reversion.

"*Scheets vs. Fitzwater*, 5 Pa. 126."

I cite also:

Kirk vs. King, 3 Barr, 436;
Scheets vs. Fitzwater, 5 Barr 126;
Vail vs. Long Island, 106 N. Y. 283;
Adams vs. Logan Co., 11 Ill. 336;
Church vs. Boland, 155 Mass. 171;
Church vs. Manning, 72 Md. 116;
Easterbrook vs. Tillinghast, 5 Gray, 17;
Campbell vs. City of Kansas, 102 Ills. 326;
Board vs. Edson, 18 Ohio, 226;
Gebhardt vs. Reeves, 76 Ill. 301.

In the case at bar the deeds are *in presenti*, the purpose and use are distinctly stated, and the conveyances are made as a free gift or donation.

And even if there has been a *consideration*:

"Although the feoffment be made for a consideration, it is the intent that guides the use, and the feoffer expressly declaring a particular estate of the use, it shows that *if he intended to part with the residue he would have declared that intention also.*"

2 *Fonblanque Ch. 5*, Sec. 4. (Note M.)

"The same principle applies to cases where the whole of the estate is conveyed or devised, but for *particular objects and purposes or on particular trusts.* In all of these cases, if these objects or purposes or trusts by accident or otherwise fail and do not take effect, * * then a resulting trust will arise for the benefit of the grantor or devisor and his heirs."

In the case of Reed vs. Stauffer, 56 Md. 226, the facts are as follows:—

Reed vs. Stauffer, 56 Md. 226.

"On the 17th of November, 1808, a lot of ground "in the city of Baltimore was conveyed by deed by one "Howard, for a consideration of 100 pounds, to trus- "tees, in trust and to and for no other use, intent, or "purpose whatever, that it should at all times there- "after be used as a burial ground or place of deposit "for the remains of the members of the Society of Ger- "man Baptists, commonly called Dunkers, and such "other persons as a majority of the trustees residing," "etc., "might think proper to give permission to be "buried therein." In 1875 a Bill in equity was filed "by the heirs of the trustees for the sale of the lot on "the ground that it had become unsuitable for burial "purposes, and that it was necessary and would be for "the interest and advantage of all the parties interested "therein that it be sold. The Court said, (p. 253):"

"In no event have the trustees named in the deed of "1808, their heirs and assigns, or trustees of the Church "of the German Baptist Brethren or their successors, any "right to have the lot in question sold and the pro- "ceeds of such sale distributed among themselves or "their *cestui que* trust. The deed of 1808 in express "terms declares the intention of the grantor, in creat- "ing the estate, to part with the use of the property, "conveyed for the particular purposes set forth in the "deed, and for no other purpose, and the grantees, by "their acceptance of that deed, are bound by that inten-

"tion. The intention of the parties to the deed is to "be carried into effect and accomplished, unless other "expressions in the deed positively forbid it; or unless "that intention violates some established principle of "law. By the express terms of the deed, it was the in- "tention of the parties to it to dedicate the lot conveyed "to the uses therein specially declared; and neither "they their heirs, the *cestui que* trust, nor the lot "holders have any right to divert it from those uses "The fact that a valuable consideration was paid for "the grant can make no difference. The estate con- "veyed and granted in express and exclusive terms, "cannot be changed by the amount of the consideration "paid. Where uses are declared they are to be held "as correspondent to the consideration. Fonblanque's "'Equity Book 11,' Sec. 4, note m, and the authorities "there cited. * * * It is manifest that neither "the original trustees named in the deed of 1808, nor "their heirs, nor the lot holders, have any right to have "the lot sold, and the proceeds of the sale distributed "among them or any of them. It must be held and "used in strict conformity to the terms of the deed by "which it was conveyed, and for the uses therein spe- "cially declared. Should it be diverted from those "uses, the terms of the deed, the heirs of General How- "ard would immediately become re-invested with the "title to the lot."

In the case of the *First Universalist Church vs. Borland*, 155 Mass., 171; one Clark, in 1854, for an express consideration of $900, conveyed by deed, certain land in the First Universalist Society and their assigns, or so long as the said real estate shall by said society, or its assigns, be devoted to the uses and support of those doctrines of the Christian religion embraced in the confession, etc., and when said real estate shall, by said society or its assigns, be diverted from the uses, intents, and purposes aforesaid, to any other intent, uses or purposes aforesaid, then the

title of said society or its assigns, in the same, shall forever cease and be forever vested in the following named persons. (Then follows a list of persons.)

"Where there is an invalid limitation over, the "general rule is that the preceding estate is to stand "unaffected by the void limitation. The estate becomes "vested in the first taker, according to the terms upon "which it was granted or devised. * * * The grant "to the plaintiff was to have and to hold, etc. These "words do not grant an absolute fee, nor an estate on "condition, but an estate which is to continue till the "happening of a certain event, and then to cease. That "event may happen at any time, or it may never hap-"pen. Because the estate may last forever it is a fee. "Because it may end on the happening of an event, it "is what is usually called a determinable or qualified "fee. The grant was not upon a condition subsequent, "and no entry would be necessary; but by the terms of "the grant the estate was to continue so long as the real "estate should be devoted to the specified uses, and "when it no longer be so devoted, then the estate would "cease and determine by its own limitations. * * * "Since the estate of the plaintiff may determine, and "since there is no valid limitations over, it follows that "there is a possibility of reverter in the original "grantor, Clark."

In *Esterbrook vs. Tillinghast*, 5 Gray (Mass.,) 17, a testator devised real estate in trust to apply the income to the maintenance of a pastor or elder in the church of the town where the testator resided, of a certain faith and practice, so long as the members of that church or their successors should maintain the visibility of a church in such faith and order. Afterwards the only two members at a meeting called by public notice, voted and resolved that they should no longer endeavor to maintain the appearance of a visible church. Held, that the church was thereby dissolved and

ceased to be a visible church, and that the trustee held the estate as a resulting trust, for the testator's heirs at law. The Court, by Metcalf, J., said:

"The devise to the defendant of the property in "question was doubtless a devise in fee, (*Cleveland vs.* "*Hallett*, 6 Cush., 407) and having been made to him "as trustee and for a specific purpose only, he holds the "property, since the failure of the trust by the extinc- "tion of the *cestui que* trust, not for his own benefit, "but for the deviser's heirs at law, and is answerable to "them for it.

Hill on Trustees (2 Amer. Ed.) 157, 185."

An authority which closely bears upon the case is that of *Cunnack vs. Edwards*. The Law Times 1 Ch. 386.

"Syllabus—In 1810 a society was established, to "raise a fund, by the subscriptions, fines and forfeitures "of its members, to provide annuities for the widows "of its members. In 1830 the rules were revised, and "the society conformed to the provisions of the friendly "societies—Act of 1829, but the object of the society "was not in any way altered. In 1848, Edwards be- "came a member and remained a member until 1878, "when he died a widower. Edwards was the last sur- "viving member. The last honorary member who, on "joining, disclaimed all benefit of the society for his "widow, died in 1879. The last annuitant died in 1892.

"The legal personal representative of Edwards, "having claimed the unexpended fund of the society "amounting to 1750 pounds;—

"Held—That the society was not a charitable in- "stitution to which the doctrine of cy-press could be "applied, and that on this point the fact that there "were honorary members whose donations were appli- "cable for the benefit of widows of members made no "difference; that the representatives of Edwards, sur- "viving member, were not entitled to the funds, neither "was the Crown entitled to them, as *boni vacantia*, but "that there was a resulting trust in favor of the mem-

"bers of the society, from time to time, of their re-"spective, legal, personal representatives, in shares in "proportion to the amounts contributed by each mem-"ber to the funds of the society."

This was an action by the trustees of a fund, to obtain the direction of the Court.

In March, 1810, a society called the Nelston Equitable Annuitant Society was established, for the purpose of raising from time to time, by the subscriptions of the members, and fines and forfeitures, a stock or fund, for the relief of widows of the deceased members of that society. By rule 16, these funds were to form the capital stock of the society, to be invested by the Treasurer in the names of the Trustees for the time being, upon approval of a majority of the managing committee or by a majority of the society, and by rule 35, it was provided that on the death of any member, after having been admitted four years and having paid his annual contributions and other payments required by the rules, and conformed to the same in all respects, his widow should be entitled to such an annuity as was set forth in the table for that purpose provided, so long as she should continue a widow.

Edwards was an ordinary member, and died in 1878, and at the time of his death was a widower, and was the last surviving ordinary member. There was only one honorary member, who, on joining disclaimed any benefit in favor of his widow.

There was no provision in the rules, as to the ultimate disposition of any unexpended funds after paying all the annuities. The last annuitant died in 1892.

The legal personal representative of Edwards claimed the unexpended funds, and the surviving trustees instituted

this action against that representative, and also the Attorney General.

Chitty, J., after reciting the facts in the case, after holding that the claim of the Attorney General that the funds might be applied *cy-pres*, as impossible, says as follows:

"The claims are, first, the representative of the sur-"viving ordinary members; secondly, the Attorney "General on behalf of the Crown; and thirdly, the "representative of the deceased member appointed to "represent for the purpose of this hearing, all the de-"ceased ordinary members. As a body the claim of "the representative of the last surviving member may "be disposed of in a few words. The society was not "a tontine society, and there is no ground for saying "that the fund belonged in equity, to the last sur-"vivor. There is nothing in the rules, or in any prin-"ciple of equity, applicable to the case on which this "claim can be raised. * * The contention for the "Attorney General was that the funds were *bona va-"cantia*, and that the Crown was entitled to them by "virtue of its prerogative. It is in virtue of this pre-"rogative right that the Crown takes the personal "estate of a man who, being a bastard, dies intestate "and without leaving issue. Such a bastard can have "no next of kin. The Crown's right attaches on the "proof of the bastardy, and no lawful issue of the bas-"tard--subject, of course, to the right of any widow he "may leave. But, in case of the death, intestate, of "the person born in wedlock, the Crown does not "take merely because there is difficulty in finding the "next of kin. An inquiry is directed, and sometimes "repeated, to find the next of kin, and it is not until "every reasonable step by advertisement and otherwise, "has been taken that the fund is ordered paid to the "Crown. The mere fact that there will be great ex-"pense and difficulty in ascertaining the equitable "owner of a fund is not, of itself, sufficient ground for "declaring the Crown entitled. The claim of the per-"son appointed to represent the deceased members gen-

"erally is founded upon the doctrine of resulting "trusts. Where a man provides a fund by way of "trust, for payment of a specified annuity to his widow "during her life, and makes no further declaration of "trust effecting the fund, the beneficial interest in the "fund or so much of it as is not required for payment "of the annuity, results to himself. The same doctrine "would apply to the case of several persons agreeing "to provide and providing such annuities for their "widows; there would be an ultimate trust in their "favor, when the purposes of the fund would come to "an end. Nor can I see how any difference could "justly be made, by reason of their raising by common "agreement such a fund, in different but prescribed "proportions among themselves. In as much then, as "all the purposes for which the fund of the society "was raised by the contributions of the members, have "been exhausted, and there is no indication to be found "in the rules as to what was to be done with the funds "when the specified purposes were worked out, I am "constrained to hold, according to the principles of "equity, that the doctrine of resulting trust applies. "It is immaterial that no actual declaration of trust "was made by the trustees in pursuance of rule 17 of "the society. * * * I therefore make a declara- "tion that in the events which have happened the funds "are subject to a resulting trust in favor of the ordi- "nary members of the society from time to time, or "their respective legal representatives, in share in "proportion to the amounts contributed by each ordi- "nary member to the funds of the society." * * *

The case just cited bears fully upon the case at bar. In one case the plaintiff's ancestors together with others dying in the society since 1836, and the present members, are equally interested in the "joint and indivisible stock," under the articles of 1836, and as such devoted it in trust as donors for purposes which have failed.

A most important case is the case of *Martha Hopkins et al. appellants, vs. William H. Grimshaw*, decided by the Supreme Court of the United States, at No. 18, October Term, 1896, (not yet reported), which arose upon a Bill in Equity by all the heirs of Stepney Forest, and by Horace S. Cummings, Trustee, against another heir, and William H. Givin Shaw, to enforce a resulting trust in, and to obtain partition of land conveyed by Forest and Redden and others, to Trustees for the Union Beneficial Society of Washington for a burial ground.

The Society was unincorporated under written articles prescribing its purposes.

The land was used for many years for burial purposes.

All the Trustees named as grantees being dead, Grimshaw obtained conveyance from Mrs. Forest and her daughter, Mrs. Brooks, her mother-in-law; from Wells, President of the Society, and from the heirs of the grantee Trustees.

Grimshaw then procured from the Board of Health leave to exhume the bodies, which he did.

The Supreme Court of the District of Columbia dismissed the bill without prejudice to the rights of the plaintiffs to claim such right, if any, as Stepheny Forest may have been entitled to in the real estate, as a member of the Society.

The Supreme Court of the United States, Mr. Justice Gray delivering the opinion, held:

> "The first inquiry which naturally arises is whether "the deed was for a charitable use in the legal sense. "If it was, the conveyance would not be open to any "legal objection by reason of the length of time during "which the trust might last, or because the Society "named not being a corporation.—*Ould vs. Washing-*

"*ton Hospital* 95 U. S. 303; *Russell vs. Allen* 107, U. "S. 163, 171. And the Trustees, although the deed "did not in terms run to their heirs and assigns, would "take the legal estate,—*Russell vs. Allen*, above cited; "*Potter vs. Couch*, 141 U. S. 296, 309; *Easterbrooks* "*vs. Tillinghast*, 5 Gray, 17, 21."

The Court proceeds to declare that the burial ground of this Society cannot be held to be a public charitable use,

"But the trust was restricted, in plain and une- "quivocal terms, to the particular Society to be bene- "fitted, as well as to the purpose of a burial ground, "adding (as if to put the matter beyond doubt) 'and "for no other purpose whatever.' The trust would end "therefore, at the latest, when the land ceased to be "used as a burial ground, and the Society was dis- "solved.—*Easterbrook vs. Tillinghast*, above cited; "*Reed vs. Slouffer*, 56 Md., 236, 254; *Second Univer-* "*salist Society vs. Dugan*. 65 Md, 460; *In re Rymer* "(1895–7, 1 Ch. 19, 31, 32.") * * *

"In the case at bar the trust created by the deed "having been terminated according to its express pro- "visions. by the land ceasing to be used as a burial "ground, and the dissolution and extinction of the So- "ciety for whose benefit the grant was made, there "arises, by a familiar principle of equity jurisprudence, "a resulting trust to the grantor and his heirs, whether "his conveyance was by way of gift, or for valuable "consideration."

In our case the purposes of the trusts are exclusive of every other than for the benefit and use of the Society in the maintenance of its principles as declared by its constitutions and laws. The titles held by the Trustees are bound by those purposes; and if those purposes have failed, then as in the Grimshaw case, the property reverts by way of resulting trust to all those owners of the "joint and indivisible stock," from 1836, as evidenced by membership, and the heirs and next of kin of those of them who have died as members.

The Master cites some cases as sustaining the assertion that the grants in this cause do not constitute a base fee. And among them are the following:

First Methodist Church vs. Old Columbia Public Ground Co., 103 Pa., page 608:

The covenant in that case was to convey in fee simple in trust for the sole use of the company hereafter to be formed for supplying water. The vendees covenanted that they should, upon erecting a hydrant at his own expense, have a supply of water from the reservoir for his own use. The water company was formed and the vendees released all their rights under the agreement to that company which did construct a reservoir of the size specified on the premises. The grantor or the vendor constructed a hydrant and used the water for some time, and then discontinued the use of it, and subsequently died. The water company discontinued the use of the reservoir twenty-five years after the agreement and conveyed the land to a corporation for church purposes. It was held that the estate conveyed originally was a fee simple and not a base fee.

This case is essentially different from the case at bar, as a reference to it will disclose.

Cook vs. Trimble, 9 Watts 15, only decides that a condition stipulated in a deed of conveyance may be enforced by ejectment, but a consideration even amounting to a covenant on the part of the vendee cannot. Part of the consideration for the sale was a comfortable support and living to be given to the grantor, his wife and daughter.

Kerlin vs. Campbell, 15 Pa., 500: Under the Act of Assembly conveyance was made in trust of an old court house and lots of ground for the use of the inhabitants of the County of Delaware, to accommodate the public service of the county; an absolute conveyance was made for valuable consideration, and the trustees made and executed a declaration of trust acknowledging the purchase money to belong to the county. A subsequent Act of the Legislature authorized the Commissioners of the county to sell the premises. The same were accordingly sold and conveyed for a valuable consideration. Held that the estate granted was not a charity or a base fee, but being granted by an absolute conveyance or a valuable consideration, the heirs at law of the first grantor were not entitled to recover the same from the last grantee. The grantor had received the full consideration.

Wilkesbarre vs. Wyoming Historical Soc.,
134 Pa. St., 616.

In this case the Borough of Wilkesbarre was authorized to sell lots of ground, first conveying to the society a lot of a certain size.

In executing this Statute, the borough added to the requirements of the Statute, a provision or clause in the deed, for the erection of a hall for the use of said society.

The Court held that the clause for the erection of a hall imposed no condition upon the title, and that the borough had no authority to introduce such a clause into the deed.

This case, evidently, has no bearing upon any question involved in this cause.

Petition of Sellers M. E. Church, 139 Pa. St., 61.

The case decides that a

"conveyance for a *charitable use*, does not cre-
"ate a conditional estate, but a trust for a *charitable*
"use, not liable to be defeated by non-use or alienation,
"in the absence of an express condition to that effect."

The case turns altogether upon charitable use, and Green, J., collates the cases, p. 67.

In our case there is no such use and therefore the case cited has no bearing.

Crawford vs Gross, 140 Pa. St. 297.

The property in this case was purchased by a few members who received certificates of stock for their advances. The property was held in trust.

The contest was between ordinary members and certificate holders. The Society became incorporated, and issued new certificates—Held that those certificates were equitable or vendor's liens.

We fail to see any bearing of this case upon any question raised in the case at bar.

We can safely say that no case has been or can be cited, which contravenes these propositions:

That a conveyance in fee simple of property to Trustees in trust for an unincorporated association, having no

limit to its contemplated life, and not formed for a religious, charitable, literary or scientific purpose, carries within its terms impliedly the provision or condition that when the trust fails, or the purposes of the society are abandoned, or the society has in any manner ceased to exist, is a grant of a qualified, determinable or base fee, and that when either of these contingencies have happened, and the trust fails, the property reverts to the donors, or their heirs and representatives.

VI.

Prior cases against the Harmony Society.

The Master claims that the land involved in this cause, is situated in, and this Court therefore is bound by, Pennsylvania decisions, relating thereto.

There is no such cause in Pennsylvania which lays down a rule of property; and there is no statute of this State affecting any question involved in the case at bar, which has received a construction by the Courts of this State. There is therefore nothing which precludes this Court from passing upon the questions involved herein, as of the first impression.

We confidently assert, that there is no such prior case, decided either in Pennsylvania, or in the United States Courts, which can justly be cited against us and the positions we contend for.

We submit to the Court that no case either affecting the Harmony Society or any other similar Society has been

cited, which involves a recognition of the *termination of a communistic Society by unlawfulness of trusts, failure of trusts, abandonment of principles, or by actual liquidation, and which seeks a general distribution of property among all entitled to distribution.*

And that the present bill, following these lines, is the only case within our knowledge, where these questions are raised, and that therefore the questions now involved are not to be ruled by any of the defendant's cases.

In every one of the cases cited, the plaintiff recognised the *existence* of the society, as a going concern; did not seek to have its life declared terminated; but sought only to make the defendant pay the plaintiff either the amount he had contributed to the society, or the value of his interest in the property, or compensation for his services. Each plaintiff sought an individual recovery or an individual relief, consistent with the continued life of the Society, and not one sought the appointment of a Receiver, a winding up, and general distribution of property.

In many of the cases in other States, the Society was either a corporation, or a religious, or charitable body, and therefore those cases are not relevant.

The first case arose in the State Court, at the suit of Peter Schreiber's administrator, and was in *account render for his share of the profits* arising under the joint transactions of the Society.

It went to the Supreme Court and is reported in 5 Watts, page 351.

The action declared for an alleged partnership, and *therefore affirmed the rightfulness of the partnership.*

At that time the only existing articles were those of 1805, 1821 and 1827, and they were of necessity the only articles offered in evidence. It is to be borne in mind that up to the date of that case and until the articles of 1836, it was the recognized feature of all the agreements that any dissatisfied member could *withdraw*, in which *event his contribution would be returned to him, in installments without interest.* The articles of 1836 were not in existence. Those articles changed the constitution, and thenceforth there was no *right* of withdrawal recognized accompanied by restoration of property.

Peter Schreiber in his lifetime had executed and delivered a deed to "George Rapp and his associates," dated August 28th, 1826, of all his property real, personal or mixed, brought by him into the society. He died in the society, *without exercising his right of withdrawal.* The intestate had also executed a *release* to the society *in the broadest terms of every suit, claim or demand against* Rapp and his associates from the beginning of the world.

There were no creditors of the decedent's estate.

No allegation of fraud or deceit was made as to the procuring of Schreiber's deed, or his release; nor that the society in its organization was *against public policy.* Judge Bredin *did* leave the question of fraud to the jury; but Chief Justice Gibson held that in so doing he committed an error—but an error of which the administrator could not complain.

And the learned Chief Justice Gibson said further that the only way the existence of the society could be attacked was that such existence was void from illegality.

The point in the case was disposed of by the Chief Justice as follows, viz.—

> "It is supposed, however, that *as the intestate had "power, by the articles, to secede from the society and to "take out of it whatever he had brought into it, the suc- "cessor to his personal rights, may exercise it as his "representative.* Such, however, are not the terms of "the articles; nor would a posthumous exercise of the "power consist with the disposition he thought fit to "make by dying in fellowship. * * * The right "of secession, therefore, is intransmissible; and were it "not, the intestate's release would be a barr."

The next case in order of time, arose in this Court at the suit of *Nachtrieb against Baker et al.* in equity, and was decided by Judge Grier, in 1847, in the Court below. On appeal his decision was reversed by the Supreme Court of the United States, reported 19th Howard, 126.

In that case Nachtrieb asserted his right *to an accounting for his share of the assets of the Society*, was confronted by his writing of withdrawal, dated June 18, 1846, and his acceptance of a donation.

The Supreme Court of the United States, in that case expressely recognizes the right of inquiry for equitable relief, to show that the

> "Rule of the leader, instead of being patriarchal, "was austere, oppressive or tyranical; his discipline "vexations and cruel; his instructions fanatical, and, "upon occasions, impious, his system repugnant to pub- "lic order, and the domestic happiness of its members; "his management of their revenues and estate, rapaci-

"ous and selfish, or dishonest; and that the condition "of his subjects was servile, ignorant and degraded, so "that none of them were responsible for their contracts "or engagements to him, from a defect of capacity and "freedom."

The Court further held, however, that in order to assert such claims for relief: "It was a necessary prerequisite that this bill should have been so framed as to exhibit such aspects of the internal arrangements and social and religious economy of the association. This was not done; and for this cause the evidence cannot be considered."

The caused passed upon the voluntary withdrawal of Joshua Nachtrieb from the Society, by a paper, which is as follows;

"To-day I have withdrawn myself from the Har- "mony Society, and ceased to be a member thereof; I "have also received of George Rapp two hundred dol- "lars, as a donation, agreeably to contract." "Economy, "June 18, 1846. JOSHUA NACHTRIEB."

And that paper was held by the Supreme Court of the United States to be more than an admission, and stood in a different light from an ordinary receipt. "The writing must be treated as the contract of dissolution between the plaintiff and the Society, of their mutual obligations and engagements to each other. No evidence of prior declarations or antecedent conduct is admissible to contradict or to vary it."

The character of the Association is found, by this decision to be as follows:

"*The members were associated and combined* by "the common belief that the *government of the patri-* "*archal age*, united to the community *of property*, "*adopted in the days of the Apostles*, would conduce

"to promote their temporal and eternal happiness. The "officers of the Society *surrendered all their property* "to the Society for the *common benefit.*"

The Court further say, after reviewing the pleadings:

"This statement of the pleadings shows that no "issue was made in them, upon the merits of the doc- "trine, socially or religious, which form the basis of "this association; nor any question in reference to the "religious instruction and administration, or the domes- "tic economy or physical discipline which their leader "and the other managers have adopted and enforced; "nor do they suggest any inquiry into the condition of "the members, or whether they have experienced hard- "ship, oppression, or undue mortification from the am- "bition, avarice or fanaticism of their guides and ad- ministrators."

It is therefore evident that so far as the Supreme Court of the United States is concerned, that had the pleadings shown such an issue, the Court would have considered the evidence, and if sustained, granted relief.

The case of *Speidel vs. Henrici*, in the Supreme Court of the United States, reported in 120 U. S., page 377, went off upon the *staleness of Speidel's claim*, the Court saying that a Court of Equity will not assist one who has slept upon his rights, and shows no excuse for his *laches*, in assorting them. The point is expressed in the syllabus as follows:

"A bill in equity against persons holding a fund "avowedly in trust for the common benefit of the mem- "bers of a voluntary association, living together as a "community, subject to its regulations, cannot, whether "the *trust is lawful or unlawful*, be maintained by one "who has left the community, and for fifty years after- "wards taken no steps to claim any interest in the "fund."

Spiedel's claim was based on contributions made under the articles of 1805 and 1827, and before the articles of 1836. In our case we claim nothing except in case of dissolution, and then as representatives of donors of property provided for by the articles of 1836.

In this case the Supreme Court of the United States distinctly held that the trust under which the assets and property of the community was held, *was an express trust* and totally inconsistent with the trust which the plaintiff, Spiedel, set up, to-wit, that the fund was held in trust for the benefit of the same persons, as individuals, though withdrawn from the community, living by themselves, and taking no part in its working.

It was distinctly stated that this decision does not rest in any degree, upon the judgments of the Supreme Court of Pennsylvania, and of the Supreme Court of the United States, in favor of the Trustees of the Harmony Society in suits brought against them by other members, because each of those cases differ in its facts, and especially in showing that the society had written articles of association which are not disclosed by this bill, and the Court refers to the cases of *Schreiber vs. Rapp*, 5 Watt, 351; *Baker vs. Nachtrieb*, 19 Howard, 126.

It is plain, therefore, that under the decision of the Supreme Court of the United States, the trust under which Rapp and his associates held the property in common, was an express trust, and second, that a bill appropriately drawn could attack the character of the trust and procure relief, unless the plaintiffs were barred, either by a release, as in the case of *Baker vs. Nachtrieb*, or by the staleness of their claim, as in the case of Speidel.

The bill in the case at bar proceeds upon widely different lines; avers the express trust upon which the assets were held; their great value; their waste; the termination of the existence of the society, by abandonment of principles, depletion of membership, unlawful processes of liquidation of debts, and the actual winding up of its affairs through the intermediation of the Union Company—the conspiracy to wreck, the processes by which the machinery of apparent management had practically centered in Duss, who absolutely swayed and governed the ignorant old women to whom he was obliged to resort to fill up his Eldership.

And the prayers *inter alia* are for a receiver, a marshalling of the assets and a winding up of the Society.

The Society Not Recognized as a Defendant.

The decision of the Supreme Court of the United States in the Nachtrieb case, in which there is a reversal of Judge Grier's decree, limits itself expressly to the point that the Bill in that case did not contain the averments to justify the admission of the evidence upon which Judge Grier had based his decree. There being no such allegations, the paper signed by Nachtrieb stood as a bar to his Bill. Judge Grier had arrived at no wrong conclusions from the evidence; his conclusions of law were unattacked. *But* the fact remained that both must be disregarded *because* that evidence and those conclusions could not be related to any appropriate allegation in the Bill.

It follows, therefore, that the decision of Judge Grier is the unreversed law of this Court, and binding upon the Master in this case in every respect, upon every question in this cause which was considered and passed upon in that decision.

The other authorities cited by the Master do not apply because they were all cases of attempts on the part of members to *either recover for services performed by them, or to get possession of property of societies which were in full life and being, and in none of them was there any allegation that the purposes of the society had been abandoned, nor was the claim to recover based on any claim of a reversionary interest consequent on an abandonment of the purposes.*

The case of Waite vs. Merrill, 4 Mo. 90, was an action against the Society of Shakers by a member *who had withdrawn, to recover the value of his services* on the ground that the agreement or covenant under which he had agreed to contribute his services and property, and released his right to reclaim any share thereof, was void as against public policy.

The Court held that the covenant between the members of the Shaker Society was not void and that the plaintiff was bound thereby, and that if it were illegal that the plaintiff could not recover on the ground of *in pari delicto potior est conditio defendendis.*

It was held further that the articles of agreement between the members were not void as against public policy.

1. *Because they did not prevent marriage*, but on the contrary marriage was *expressly* allowed; and that if there

were a contract not to marry it was not a *perpetual one*, but *simply endured while membership in the society continued.*

2. That in as much as any member *could withdraw* when he *chose*, it was not void because it deprived the plaintiff of the power of acquiring and protecting and possessing property in as much as it only changed the mode in which he chose to exercise and enjoy this right or power, even though he lost his property when he withdrew.

3. That civil tribunals have no jurisdiction over questions of *ecclesiastical belief.*

In this case it will be noted that the society was in *full force and vigor* and that the attempt was to recover on an *implied contract* for services, when an *express contract* expressly forbade such recovery and there is no question of abandonment or reverter.

The case of *Brown vs. Dale, 9 Ch. Div. Law. Rep., page 78*, is inapplicable because the contest there was, as to the right of members to *participate in the funds of the society*, who had been admitted *subsequently to a resolution dividing its property among existing members*, and there was no question *abandonment or reverter, or any claim of persons who had previously been members of the society, or their descendants.* In that case the society was a voluntary one and had no printed laws or rules regulating the disposition of the money, property or admission of members: but there had been a custom for the members of the company for the time being, or a majority at any meeting to exercise unlimited control over the management of the company's property, and that it had been the practice to admit *sons* of

members as of right attaining twenty-one years, and becoming freemen of the Borough of New Castle on Tyne; and under these circumstances the Master of the Rolls held that the fund should be divided among the persons who were members of the guild at the time when the resolution dividing the property was passed. At this time there were *no persons who were members or entitled* to be admitted members other than *the plaintiff and defendant.*

The case of *Grosvenor vs. United Society of Believers, 118 Mass.. 78,* was an action on a contract to *recover for services rendered* to the defendant society of Shakers from which the plaintiffs had been *expelled;* and here the whole question turned on the *legality of the expulsion,* the Court holding that under the covenant or articles of association the plaintiff had not an absolute right of support, but a qualified one, namely: that she was only entitled to support "*According to her needs and circumstances while standing Gospel Union and maintaining the principles of the covenants,*" and having been *rightfully expelled she could not recover.* Here there was no question of reverter or abandonment of purposes.

The case of *Burt vs. Oneida Community et al.,* 137 N. Y., Court of Appeals, page 346, was an action in equity brought by the plaintiff, a member of the *Oneida Communists, an unincorporated association, against the Oneida Community Limited, a domestic corporation,* and certain individuals alleged to be members of the Community. The relief sought was that an alleged *expulsion* of plaintiff from said Oneida Community be *adjudged void, and that he be adjudged to be a member thereof; that an alleged dissolu-*

tion of said Community be adjudged illegal and void; and that the Oneida Community Limited should be adjudged to hold the *property* in its possession in trust for the plaintiff and the other members of the *Oneida Community;* that the members of the latter be adjudged *partners or owners of such property, as tenants in common,* and that an accounting be had and a decree be rendered for a division and distribution of the same.

By the articles of association which were signed by plaintiff, each subscriber surrendered his individual property and it became an inseparable part of the capital of the Community; it was also entitled to all the earnings of its members; each member was at liberty to withdraw at any time, but in case he did so he was not entitled to take or demand any share of the joint property. There was also a material stipulation that *no member* would *ever bring an action* or proceeding to recover wages or compensation for services or to recover any property contributed, or make any claim or demand therefor. Plaintiff had never *contributed any property* but had contributed his services as traveling salesman. In 1880 he left and entered the service of a rival company. In 1880, after the plaintiff left the society, *nine members thereof took out a corporate charter.* The object of the corporation was to carry on a *general manufacturing and agricultural business,* including all the different kinds of business in which the community was then engaged. The capital stock was $600,000, which fairly represented the net value of its property, and since the incorporation of the Oneida Community Limited, had carried on all the different kinds of business which they had carried on first as an unincorporated association.

Among these members were those *who held the title* to the real property of the community. The property of the community was all turned over to *this corporation* and the capital stock was taken by all the members of the Community, and thereafter the unincorporated association did not engage in any business nor did it undertake to discharge any of the obligations in its covenants with the members. Counsel for plaintiff contended:

(1). That plaintiff was illegally expelled; that the Oneida Community being a mere voluntary association is to be deemed a mere partnership.

(2). That the real estate was acquired and contributed by the members for the use, benefit and profit of the association or partnership while it lasted, and no valid trust could have been created by agreement of the parties so as to vest the same in the property holders as trustees for the uses of the association. The only trust was that which resulted from the acts of the parties—the resulting trust created by law.

3. That the conveyance of all the property of members of the Community by the property holders to any persons except a full member, was illegal; that if the property holders were authorized to convey it to a corporation, the corporation was not capable of holding it and using it for the purposes of the Oneida Community.

4. That the conveyance of the property to the corporation was fraudulent.

The Court expressly said that it decided the *question on the ground* that this was a business compact and was a *business community*, and as such it was not prohibited by

any statute, nor was it in contravention of any law regulating possession, ownership or tenure of property; that it imposed no unlawful restraint upon the alienation of property for the title of *real estate could be transferred at any time by the united action of the members* if they saw well to do.

2. That by the articles of association the plaintiff acquired no divisible interest in the property of the Oneida Community, but only a right to its use while he remained a member; that it was a joint holding of the property by the members of the community with this qualification, that upon the death or withdrawal of a member, no share or interest passed to him or his personal representatives, but they who survived or remained continued to hold jointly the entire property in *solidium* and that as the plaintiff had withdrawn, his action must fall.

3. That whether or not the incorporation of the society and the turning over of the property of the association to such corporation amounted to a *dissolution* was not decided, and that if it were found as *a proposition it would not help the plaintiff because he had ceased to be a member of the community before this section was taken, and his property rights were not prejudiced by it.*

This case is distinguishable on several grounds.

1. The Court places its decision expressly on the ground that the plaintiff withdrew from the community without cause, while it was a *living organization*, and that his rights were by that act determined. There was therefore no question or no decision as to what would have been the rights of persons who died while members in the case of subsequent abandonment of the purposes of the society,

or in case it had subsequently ceased to be a living organization.

2. The plaintiff in this case sued and based his sole right of action on the fact that he was a *member of the society* and the Court found that he was not a member, and this question is therefore not passed upon.

3. A conveyance of the property of the unincorporated Community to the association was joined in by every member of the Community except plaintiff and the corporation carried on the same business for the same purposes as the unincorporated association, and it was a mere change in *name* and not a substantial change of ownership.

4. The Court did not pass upon the ground of *public policy*, but simply regarded the incorporated association as a *business community* and refused to go back of it, and held that it was a mere matter of contract between the parties.

5. The Court refused to pass upon the question whether the transfer of all the property to the corporation was a dissolution or not because the *plaintiff could not raise the question* on account of want of interest.

6. Thus, while the Court say that upon the death or withdrawal of a member no share or interest in the property passed to him or his personal representatives, the case cited by the Court sustaining this position expressly put that decision upon the ground that the association was a *living* organization, and was following out its purposes and intent and the whole case is decided on the theory that it was in *full life and existence at the time*. And in effect, the whole decision was simply a denial of the right of a member who had lawfully withdrawn to wind up a going-business partnership.

In the case of *Gasley's et al vs. The Separatists Society* of Zoar, 18 Ohio St. Rep. 144, a member of the society who had withdrawn asked for a partition of the property which was held in common, and the Court held that she had no separate or divisible interest therein which would entitle her to relief. There was no question of *abandonment* in this case. *The Society* was in full operation. It was urged in this case that there was no grantee capable in law of holding this property, and 2nd—That the articles were void as creating perpetuity. *The Society was incorporated under the laws of Ohio in 1832.*

The Court, while not passing upon these questions on the ground that the plaintiff *had no interest which would enable* him to raise the question, on page 154, said that if the attempted transfer to the collective membership for the exclusive use of the society were void as creating perpetuity the property *reverts to its former owner*, but does not devolve upon incoming members subsequently, in whom it was not previously vested and who acquired no separate interest therein by the articles, still says that there is a grave question "whether the perpetual diversion of the property and its proceeds to the uses of the society, qualified by the powers delegated to the directors and the majority of the members creates such a perpetuity as avoids the surrender." (page 156.)

In this case the property was purchased by one Goesele *in his own name*, and subsequently his associates were allowed to take title upon *paying for the property by their labor, etc. Subsequently to* this however, it was declared that the property was held in common and the members re-

nounced all their personal interests and invested the property in the society with the declaration that the property should be and remain the property of the society forever. There was no gift *here* by any individual but simply a renunciation and a gift to the society as such. The case simply decides that where a member of such a society withdraws he is not entitled to any partition of the property, while the society *remains in existence* and fulfilling the object for which it was erected.

And the society was incorporated in 1832.

In Goesele vs. Bimeler, 14 How. 589, it was held that the conveyance of the property of the defendant society was not void as creating a perpetuity, on the ground that the members of the society acting unitedly could *sell the* property and that in the present case the property was *absolutely* the property of the *the society* and was only managed by a *Board of Directors and was incorporated*, and there was no restraint.

In our case the legal title to the property is vested in a *self-perpetuating board of trustees* who have no other power than to change investments and when they sell land they are required to hold the proceeds in the same trust as they hold the land.

The Master in his report quotes the grant continued in the agreements of 1805 and 1827, and thereupon avers "that this does not create a limited or base fee."

We have never alleged they did—Under both of

these agreements, individual members had the right of withdrawal from membership and to receive the property contributed back upon such withdrawal without interest.

The Master wholly fails to consider the articles of 1836, upon which alone we base our contention. We repeat that the grants of 1836, do

1st: Merge all prior contributions of money, land and labor, and all future acquisitions, into one "joint and individual stock."

2d: That all the then subscribing members and all future subscribing members, were equally interested therein.

3d: That all acted in putting that stock, lands, moneys, goods, proceeds of labor, into the hands of Trustees, by titles in fee and absolute for the benefit and use of the Society.

4th: That there was impliedly and necessarily in such grants, the provision that when the trust failed, the fee and absolute title thereto should revert to those who parted with it in trust—namely the members since the making of the grants living, and the heirs and legal representatives of members dying in the Society.

5th: Because the terms of the Trust provide no remainder over, makes no scheme of tontine or joint tenancy with survivorship, or any distribution whatever in the event of the failure of the trust, and that therefore necessarily the grants are limited or base fees.

This "joint and indivisable" stock comprehending all the present and future property of every description, is subjected to the trusts declared in the articles of 1827, be-

cause the articles of 1836, re-affirm those of 1827, except the 6th section, relating to restitution.

Therefore the trust declared in the first article of the agreement of 1827, defines its terms, from 1836 down to 1847 to wit: "As a free gift or donation for the benefit and use of the said association;" and by the agreement of 1847—article 6th—(65) the property is to be held and deemed the common property of said Society, and each Trustee then and thereafter appointed disclaims all personal interest therein, "other than that of a member thereof."

Prior to 1836—viz: in 1825, Frederick Rapp, the then Trustee (M. R. 142), executed his declaration of Trust; and on July 5th 1834, George Rapp his successor, and Baker and Henrici, George Rapp's substitute, executed their several declarations of Trust (M. R. 145), fixing absolutely the titles, removed wholly from personal interest, in and for the benefit and use of the Society, without remainder over.

Suppose the Society dead. Where then by its terms is the property of the Society to go.

In our case the estates are taken upon the trust that in the event the trusts fail or the society is dissolved by process of law or by voluntary dissolution, or by abandonment of purposes, or from any cause, they shall go in some direction by resulting trust or to survivors, or by *escheat* to the Commonwealth. Nobody will contend that it is part of the Trust, that in such events the Trustees acquire a title for their own use.

VII.

The Trusts Do Not Create a Scheme of Tontine.

Assuming now, for argument's sake, that the property of the Harmony Society is in the custody of this Court for distribution, the right of the titular plaintiff to distribution depends upon two questions;

1st. Does this property pass by survivorship or by tontine to the last surviving member?

2nd. Or does it *escheat?*

Either joint tenancy with right of survivorship, or tontine, must be the result of *express agreement.* They cannot be presumed by construction.

Examine each and every one of the articles of this society, and so far from finding any provision for the ownership of the property in case of illegality or dissolution, you will find nothing except the contemplation of an enduring and never-ending existence. No provision is made for a termination of existence.

Survivorship is under the ban of the law.

We quote from the Act of 5th of March 1812, Section 1, 5th Smith, 395:

> "If partition be not made between joint tenants, "whether they be such as might have been compelled "to make partition or not, or whatever kind the estate "or thing holden or possessed, be, the parts of those "who die first will not accrue to the survivors, but shall "descend or pass by devise and shall be subject to "debts, charges, curtesy or dower or transmissible to "executor or executors, and be considered to every other "intent and purpose in the same manner as if such de-

"ceased joint tenants had been tenants in common; "provided always, that nothing in this Act shall be "taken to affect any trust estate."

Trustees only take by survivorship, and they alone are excepted.

There is no arrangement in the articles that the last survivor is to receive the whole.

The essence of tontineism consists in reserving for the last survivor among several investors the profits realized from their common investments. And this demands express written covenant.

Neither survivorship, nor tontine can be presumed.

We might concede that while the Society exists consistently with its principles, and in good faith, and in accordance with the law, it may hold and enjoy the common property; yet when it ceases to exist, and the time for distribution comes, the members do not take the property in severalty as survivors, but distribution is to be made equally among all the members signatories of the articles of 1836, those living, and the heirs and next of kin among those dead.

To hold otherwise is to introduce into the articles, provisions not to be found there, and to construe them, so that Duss, potentially being the last survivor, takes those vast estates as his own; and he who came into the Society in 1890, a poor man—who never contributed one dollar to the funds of the Society—will find himself enriched of the estate or those who for many years contributed to the wealth of the Society by hard labor, and who died in the Society in full membership. What merit does he possess? What equity can he urge?

Such a construction has been acted upon by him. He

has admitted no new members since 1892. He has depleted the funds of the Society in the purchase (by paying large sums,) of the interests of seventeen members in full health and vigor, solely with a view to hasten this survivorship. He has yielded to the temptation described by Judge Grier, in his opinion in the Nachtrieb case.

That learned Jurist, who had before him Henrici, Baker and all the old members of the Society, and was made thoroughly acquainted with the articles of 1836, and the preceding articles, with the faith, beliefs and purposes of the Society, held that it was not then and "*had not been de-*"*termined* that ultimately all the property of the Society is "to vest in one or a few of its members."

Commenting upon a construction which might in the future be made that survivorship existed, he says:

> "*Unless human nature should be proof against the* "*strong temptation to hasten such a result*, the dissolv-"ing element would be always at work. The unwritten "rules of the Society inconsistent with natural rights "and liberties as seen beyond its own limits, the death "of its members, the expulsion of others with or with-"out cause and the prohibition of marriage, and the "lawful intercourse of the married, would in time so "reduce the community in numbers as to make it expe-"dient and proper in the opinion of the survivors to "dissolve and divide the possessions. It is not meant "to infer that any such ulterior result is projected, or "that in view of it, it in any way influenced the pro-"ceedings against the plaintiff (Nachtieb); it is noticed "simply for the purpose of glancing at an undisputable "and imputed right which will attach to each member "of the community at its dissolution; an event it may "be near or remote; but which not unreasonably, such "member may think may happen in his life time, and "to value accordingly, with its disadvantages if any, the "privileges of membership."

This Court is now called upon, *and for the first time by any Court*, to "ultimately determine" that all the property is to vest or not to vest in one or a few of its members.

This Court can find no call therefor in any written provision in any of the articles. Duss and the Eight others left have no rights which this Court is called on to respect except in and by the articles themselves. Apart from them, he and his few retainers cannot be heard in this Court. He and they must show something in the *articles themselves* to support the contention of survivorship or else it does not exist.

All his right and theirs must exist within a *living* society—a continuing society as provided by the articles themselves.

The law relating to *escheats* does not apply to this property.

Ordinarily it operated only in the absence of inheritable blood. Here there is inheritable blood.

In the statutes relating to religious, charitable, scientific and educational purposes, an *escheat* is declared only when *corporations* for such purposes have exceeded the limitations of their powers as defined by those statutes. A corporation can of course have no next of kin; it possesses no inheritable blood. But an unincorporated association preserves the individuality of its members and their inheritable qualities. And there is no *escheat*, as long as there are heirs to take.

The Court below sustaining the Master, concedes as we understand it, that the Trusts are established for the society *as a society*, and not for the members of the society *as members*.

And in this view it is sustained by authority:

The case of *Kain vs. Gibbony* 101 U. S, 362, cited by the defendant's counsel, held void a gift by will to "Richard V. Wheelan, Bishop of Wheeling, or to his successor in said dignity, upon a trust that in the event the testatrix should afterwards become a member of any of the religious communities attached to the Roman Catholic Church, and remain so at the time of her death, the said Wheelan, Bishop, and his successor in said dignity was constituted a trustee for the benefit of the community of which the testatrix might be a member. The said property or money to be expended by the said trustee for the use and benefit of said community. The testatrix became a member of the community known as the Sisters of St. Joseph which was unincorporated.

Justice Strong held, among other things, as follows:

"That is an *unincorporated association*, and it is "the association as such and not the individual mem- "bers who composed it when the testatrix died which is "declared to be the beneficiary * * * Its mem- "bers must be constantly changing and it must always "be uncertain who may be its members at any given "time. No member can assert claim on individual ben- "efits from the bequest, or assert that she is a *cestui que* "trust; and the community having no *legal* existence, "can never have *standing in court to call a trustee to* "*account*. This bequest is, therefore, plainly invalid "unless it can be supported as a charity, and it is far "from evident that it is a gift of charitable uses. It "looks more like private bounty. Charity is generally "defined as a gift for a public use. Such is its legal "meaning, and here the beneficial interest is given to a "religious community, but not declared to be for re- "ligious uses. There is nothing in the will to show "that aid to the poor or aid to learning, or aid to re- "ligious or to any humane object was intended."

VIII.

As to the Title of Appellants.

The Master has seen proper to make three classifications, in any one of which Plffs. might consider themselves to be,

> "First—Those who withdrew from the Society be-
> "fore the execution of the agreement of 1836.
> "Second—Those dying in the Society before that
> "time.
> "Third—Those who died, members of the Society,
> "after having joined in the agreements of 1836 and
> "1847."

We disclaim any pretense of right under the first two paragraphs of this classification. We do not pretend to assert any right to participate in distribution, under any ancestor, who withdrew from the society before the agreement of 1836; or who died in the society before that time. We make no pretense of claim based upon any contribution by any ancestor prior to 1836, nor do we claim to recover the *amount* of any contribution by any ancestor since that date.

Our claim is based wholly and solely upon the articles of 1836, wherein all former and all future contributions of lands, goods, money and labor were converted into a "joint and indivisible stock." Thereby all the then members and all future members signatories to the articles of 1836 became as against all the rest of the world equal owners thereof; and by their act and deed as donors confided this joint and indivisible stock to trustees for the use and benefit of the society.

Upon the failure of this Trust, seeing that no provision is made for such event; that there is no joint tenancy with survivorship in the members nor scheme of tontine to whom can the property of the Trust go except to those who had been the owners, and who only parted with their titles for the establishment of the Trust?

The second clause of the covenants of the supplementary articles of the 31st day of October, 1836, provides that

> "All the property of the Society, real, personal "and mixed in law or equity, and howsoever contrib- "uted or acquired, shall be deemed now and forever "*joint and indivisible stock.* Each individual is to be "considered to have finally and irrevocably parted with "all his former *contributions* whether in land, goods, "money or labor; and the same rule shall apply to all "future contributions whatsoever they may be."

There was thus established an *equality of ownership* by all members of the Society signing the agreement and all subsequent signatories. This ownership is controlled by trusts and conditions in those articles and in other preceding articles.

Justice Grier in the Nachtrieb case says (p. 23 Grier's opinion) of the articles of 1836, and of the property of the Society;

> "It was held by the Superintendent in trust for "the common use and benefit of all its members as "joint and individual stock. *The complainant's inter-* "*est was therefore an equal undivided interest of all* "*that property* to be determined *after the settlement of* "*all just claims against the Society by the number of* "*its members.*"

This construction was not doubted in the Supreme Court, for the cause passed off on other grounds.

Christian Swartz, one of the Plaintiffs, claims as the sole heir and representative of the following persons members of the Society in 1836 and signatories of the agreement of 1836 as aforesaid, and dying as such members after 1836, viz:—

Plaintiff's father died intestate, July, 1858; his mother intestate February 11th, 1857 leaving six children—all of whom were members, and died members (except the plaintiff) as follows:—without children and intestate,

Fredericka, January 11, 1857.
Maria, May 26, 1878.
Louisa, March 29, 1889.
Joel, ———, 1858.
Joseph, June 25, 1889.

Anthony Koterba, claims through Andreas Koterba, who died in Economy, a member, May 25, 1880.

David Strohaker: his father died 1867, and his mother in 1875, both dying in the Society; his aunt died a member in Economy in 1865.

Allen Shale and G. L. Shale, claim through their grandfather who died a member of the Society in 1855, and through their uncle who died in Economy in 1837.

Whatever title these people had since the 31st day of October, 1836, in the property therein equalized in ownership *descendible under the intestate laws of Pennsylvania*,

has vested in the plaintiffs and they are therefore as heirs and next of kin competent parties to this bill.

The Master has found the heirship of the above named plaintiffs in accordance with the foregoing statement.

IX

Are the Plaintiffs barred by Lapse of Time?

The Master's report presents and endeavors to force upon us a false issue to some extent. The position taken therein, is that if the agreements of 1805, 1827 and 1847, are void as creating a perpetuity, or because the society is unincorporated, then the plaintiff can have no claim to it at this time, because the grants were void at the time they were made; that the last of these agreements was signed by our ancestors more than fifty years ago, and if any property was contributed by them it was at that time, and possession was then taken by the society and held adversely by it ever since.

But we make no claims for individual contributions made by our ancestors at any time, either under the articles of 1805, 1827 or 1847. The only claim we present is that under the articles of 1836, a "joint and indivisible stock" was created in which all the then and all the subsequent members became equally interested, and being equal in interest donated it in fee simple and absolutely to trustees for the use and benefit of the society. That when the purposes of that gift failed for any cause, the gift of itself reverted to those who gave it, their heirs or legal representatives, and not to the few or the one member who happened

to be the surviving members or member of the society living at the time of such failure.

This proposition of the Master pre-supposes that there was a moment of time when our ancestors or ourselves were judicially fixed with knowledge and impressed with the equitable duty of action that the grants were void, because of the badness of the Society's purposes, its incapacity to take and hold property, and because the grants create a perpetuity, and that that moment of time began with the creation of the society; or the creation of the Trusts. And the conclusion therefore is, that a society admittedly bad, as his argument assumes and violative of public policy; a society incapable in law of taking property either directly or indirectly—a society which is the beneficiary of grants admittedly in defiance of the laws against perpetuities, may never be declared dissolved by a Court of Equity, because such decree had never been sought for in the past. It is a *living thing* which may plead laches or lapse of time, against one who seeks to separate for himself a portion of the property held by the living organization. A void community, an association violative of law, can have at no time a claim in equity, to continue to be regarded as not void and not violative of law, because it had for years escaped an earlier attack. Upon the hypothesis of the Master's proposition, the society is a wrong doer, and because it has escaped thus far, it has acquired a legal right to escape forever.

Statutes of Limitations, the statute of frauds, the doctrine of laches, and of estoppel, are all intended to *prevent* frauds, and not to *protect* and *sustain* them.

X

Does the Agreement of 1836 Bar Plaintiff?

The Master (180-181) holds that the plaintiffs, whose ancestors died members of the Society after the articles of 1836 have no claim on the property of the Society.

> "Because they had by that agreement expressly "renounced for themselves and their heirs all right to "claims anything on their withdrawal or death.

This is a misconception we respectfully submit.

The paragraph is as follows. (59:)

> "2nd. All the property of the society, real, per- "sonal and mixed, in law or equity, and howsoever, con- "tributed or acquired shall be deemed, now and for- "ever, joint and indivisible stock. Each individual is "to be considered to have finally and irrevocably parted "with all his contributions, whether in land, goods, "money or labor; and the same rule shall apply to all "future contributions whatever they may be.
>
> "3rd. Should any individual withdraw from the "society, or depart this life, neither he, in the one case, "nor his representative in the other, shall be entitled "to demand an account of said contributions, whether "in land, goods, money or labor, or to claim anything "from the society as matter of right. But it shall be "left altogether to the discretion of the superintendent "to decide whether any, and if any, what allowance "shall be made to such member, or his representatives "as a donation."

1st. The members parted with their individual interest then existing in the property and converted into "joint and indivisible stock." This was necessary to clear the title of the trustees.

2nd. The 3rd paragraph deprives members of a right to individual accounting for the amount of their contributions, or to claim anything as a matter of right from the Society.

We are not demanding any accounting from *the Society* for any contributions of lands, goods, money or labor, or claiming anything from *the Society* as a matter of right.

Our whole claim is that the Society is defunct; that the Trusts have failed, and that the property must go somewhere. As its destination is not fixed by the articles, it must go to *all* the membership then living and those who died in the Society since 1836 and their heirs by way of resenting trust, as donors of the grants.

The paragraphs cited by the Master do not conflict with our rights, and the Master errs in applying those paragraphs adversely to the claim of the plaintiffs in this cause.

THE HARMONY SOCIETY HAS CEASED TO EXIST

The career of John S. Duss is remarkable. Without previous membership, without contributing any means whatever to the already vast properties of the society, he became on the same day, January 24, 1890, both a member of the society and a member of the Board of Elders.

On July 28, 1890, he became Junior Trustee, Jacob Henrici, the Senior Trustee, being an octogenarian, and in feeble physical condition.

On the death of Father Henrici, which occurred on December 25, 1892, Duss became Senior Trustee. In a short time thereafter, the new Junior Trustee sold out, and then Duss became both Senior and Junior Trustee, and we believe he has adopted the title of "Patriarch."

He was thirty years of age at the time of his admission.

In less than three years he had acquired absolute control of all the trust properties of the society, as technical trustee and dominant governor and control of the persons constituting the membership, the policy and affairs of the society. There was no one to say him "nay."

These estates are found by the Master (240) exclusive of the property at Economy and Leet Township, to amount to $1,707,952.31. The three thousand acres of Economy land, &c. not included in this total, highly developed for oil, with several hundred houses, factories, mills, erected thereon, is worth at least $3,000,000. No property in the vicinity of Pittsburgh is more eligibly situated; it possesses more than two miles of river frontage; but eighteen miles below Pittsburgh, and has excellent railroad facilities.

This young man, then, accountable to no person, has as exclusive control of this estate as any private man could have, short of the legal title in himself. His expenditures for members is limited to the food, lodging and clothing of a few old people, whose lives had not led them to be dissatisfied with plain living.

The expectation of being the last surviving member was a reasonable one. The belief at that time was a general one that the grants to Trustees of the properties created a joint-tenancy in the members with right of survivorship;

that whoever did so live, would take them all as his own, cleared of the trusts.

The motive to so survive was natural, and necessarily dominant. We confidently say that not an act has been done since Duss became an Elder, which he could control, that did not have the accomplishment of that survivorship, and the acquisition of the property as the objects.

The situation is admirably described by that learned Jurist, Grier, J., in his opinion filed in the Court below, in the case of Nachtieb against the Society:

> "Unless human nature should be proof against the "strong temptation to hasten such results, the dissolv- "ing element would be always at work. The unwritten "rules of the Society inconsistent with natural rights "and liberties as seen beyond its own limits, the death "of the members, the expulsion of others, with or with- "out cause, and the prohibition of marriage and the "lawful intercourse of the married, would in time so re- "duce the community in numbers, as to make it expedi- "ent and proper in the opinion of the survivors to dis- "solve and divide the possessions * * *

Duss had before him at the time of his accession to power the full declaration of the purposes and principles of the Society—constituting the very reason for the foundation and continuing existence of the Society—as fully set out in the Articles of 1827, viz:

1. Christian fellowship.
2. Apostolic commity of goods.
3. Patriarchal Government.

He had also full knowledge that those articles, as well as those of 1836, had been made part of the articles of 1847, and that all the properties, lands, goods, monies and fruits of labor from 1836, down, were converted into a "joint and

indivisible stock," which was placed in the hands of Trustees in trust for the benefit and use of the Society, and that that joint and indivisible stock was in his hands *only* as Trustee under the trust declared.

He also knew that that benefit and use was the maintenance and welfare of the society based upon the purposes and priciples declared in 1827, and solely for which the Society was formed,

He knew of the fact of celibacy as a principle of the Society, and he knew of its absolute necessity to the continued life of a communistic Society.

And he also knew of the power of admission of new members—equally a necessity for the maintenance and life of a communistic Society.

CONDUCT OF DUSS.

Since Duss became the sole expression of power, the sole Trustee, he has destroyed the Society.

Communism of Property—He has it all, less the expenses of maintaining five or six old people, of peasant extraction, laborers in their working lives, and with plain tastes, easily and economically gratified.

The foundation principal of celibacy is discarded. He lives with his wife and his family, in the Great House at Economy.

He has abolished the Community. For a community implies numbers—The very code of government of 1847, is

based on a governing body on the one part, and people to be governed on the other. Every available living member, females except himself, are needed for the Board of Elders, and there are none others upon whom the government is to be exercised.

He has admitted no new members since 1893.

He has purchased the proprietary interests of seventeen able bodied and comparatively youthful men--whose ages were menaces to him, for an average sum of $5,000 each, and has in violation of his trust, abstracted the trust funds to pay them. This was an act of liquidation, of partition—a setting apart to the vendors their shares of the whole estate as appraised by them and by Duss, leaving to himself the residue enhanced by his cheap bargains, for himself.

He has recognized as indebtedness of the Society an amount of $1,500,000, claims which were in no view binding upon the Society, and has diverted the Trust monies in his hands to the payment of the same.

He has conveyed every foot of land of the Community to a corporation of Pennsylvania known as the Union Company, and taken for it its capital stock—so that the Society as such has neither property of the Trust, nor the form of government provided by its constitution.

In no one sense, nor in any view, does the Harmony Society exist within the limitations of purposes and principles and the mode and form of government prescribed by its constitution.

THE PRINCIPLES OF THE SOCIETY ABANDONED.

We submit the evidence discloses that not one of those principles or purposes survive.

Numbers form an *essential* feature of a community, and of this community, So the articles of 1821 provided for the admission of *new members*. The articles of 1847 confer power on the elders to admit new members.

Not one new member has been admitted since 1893. Duss has purchased at prices averaging several thousand dollars for each, the interests of seventeen members, all of whom except Fredericks, were healthy and vigorous, and none exceeded a moderate middle age. Their possibility of life was almost as good as that of Duss and his wife. That depletion has never been made good.

Look at this statement:

In 1805 seven hundred and fifty persons constituted the Society and built the town of Harmony, in Butler County. In 1827, 637 persons signed the articles of that date. The articles of 1836 bore the signatures of 448 persons; the treaty of 1847, the signatures of 375 persons; those of 1890, the signatures of 44 persons, of whom 26 were women; those of 1892, declare the numbers to be 34 persons, of whom 18 were women. Those of 1894, the names of 18 persons—13 of whom are women.

The surviving members now are J. S. Duss, Senior Trustee and Junior Trustee, age 39, joined 1890.

Board of Elders:

Susie C. Duss—	Age 38,	joined	1890.			
Frederika Muntz—	" 77,	"	"	can't	speak	English.
Caroline Molt—	" 54,	"	1887	"	"	"
Barbara Boesch—	" 80,	"		"	"	"
Katrine Nagel—	" 58,	"	1887	"	"	"
Franz Gillman—	" 77,	"	1887	"	"	"
Mrs. Hermansdoefer	" 47,	"	1890			

Members of the Society not Elders:

Christina Rall, 77 years of age. " " "

Except Duss no men remain in the alleged Society save Franz Gillman—a German aged 77 years; ignorant, and who joined the Society in 1880. He can neither read or speak English though in this country for nearly 30 years. His examination on page 575. shows him to be practically an imbecile and for this reason no one remains to fill the position of Junior Trustee, as required by the articles of association and Mr. Duss is the absolute ruler of the society's external affairs without check, hindrance or supervision. Excepting the aged Gillman the Board of Elders is composed entirely of women, not one of whom is competent to act, excepting possibly Susie C. Duss, the wife of Mr. Duss the society's only Trustee. The majority of these women are old and only two can speak English. Within a year it is safe to say half will die—leaving the alleged society utterly without members save on the board of Elders, who will be bereft of all power of action under the quorum required by the articles of association, even if they make any pretense of a continuation of the society.

Since 1895 seventeen of the most active, intelligent and worthy members of the society were bought off by Mr. Duss,

accepting money and real estate ranging from $4,000 upward, and since 1890 eighteen members have died, while on the other hand since Mr. Duss became Junior and afterwards Senior Trustee, *not a single new member has been admitted, but one*, with the result that *he and the decrepit Gillman alone remain as the male* members of a society once having an active membership of *nearly one thousand*, which filled the large town of Economy with its hundreds of houses and many streets. Now the remnant will scarcely fill the rooms in the Great House.

Members who retired while Duss was Senior Trustee.		**Members dying since 1890.**
Hugo Miller, March 8, 1893,	$5,000	John Worth,
Julius Stickel, Mar. 29, 1893,	1,200	Kershbaum,
Paulina " Mar. 29, 1893,	1,200	John Lenz,
Bertha Geratch, Mar. 29, 1893,	1,200	E. Woefel,
Jacob Nicklaus, May 5, 1893,	5,000	M. Staib,
Henry Feucht, May 16, 1893,	5,000	H. Fishern,
Margaret Feucht, May 16, 1893,	5,000	J. Henrici,
Benj. Feucht, May 16, 1893,	5,600	G. Lauppe,
Rebecca Feucht, May 16, 1893,	5,600	J. Scheib,
Tirze Feucht, May 16, 1893,	5,600	E. Beck,
Sig. Stievator, May 17, 1893,	5,000	D. Hoer,
M. J. Fredericks, June 5, 1893,	5,000	S. Wolfangel,
B. Platz, June 9, 1893,	5,000	C. Hermansdoerfer
Christina Hoerer, June 23, '93,	2,500	M. Diem,
Leonhard Hoerer, June 23, '93,	2,000	P. L. Wolfangel,
Eliza Sieber, June 29, 1893,	4,000	R. Lautenschlager,
Samuel Sieber, July 6, 1893,	1,000	G. Rietmueller,
		E. Kellerman.

This society is recognized as a "Community" in the articles of 1805; of 1821; of 1827; of 1836—It is styled an "association" in those of 1847; of 1890, 1892 and 1894.

Is it not farcical to call these nine persons—constituting the formality of a Board of Elders and a Board of Trustees with no membership to govern or control—in number not exceeding an average family—to call these a "community"—an "association" a "society"? It is almost an affront to common sense, and to the significance of language.

Here is the testimony of the only living male member (except Duss)—Franz Gilman, an elder:

"Testimony of Franz Gilman.

"Franz Gilman, called by plaintiff's, being duly "sworn, testified as follows, through the interpreter:

"*Direct Examination by Mr. Schoyer:*

"Q. What is your full name ?
"A. Franz Gilman.
"Q. What is your age ?
"A. Sixty-six years.
"Q. Do you speak English ?
"A. No.
"Q. Do you read and write German ?
"A. In German I can some.
"Q. Where were you born?
"A. I was born back of Pommern, in the King-"dom of Prussia.
"Q. When did you come to this country?
"A. In 1873.
"Q. When did you come to Economy?
"A. In 1876.
"Q. When did you join the society?
"A. In the year 1880.
"Q. What did you do?
"A. I was a man that worked in the field.
"Q. What have you done since?
"A. I work along with the others all the time.
"Q. Have you any position in the society other "than that of a member?
"A. Not since I belonged to it.
"(Question repeated.)

"A. I am a workman in the fields and a common "person.

"Q. Are you a member of the Board of Adminis- "tration?

"A. Yes, sir.

"Q. When were you elected?

"A. I cant remember; ever since they went away.

"Q. You mean by that the members who left the "society?

"A. Yes; since then I have been elected.

"Q. Were you present at the election?

"A. I was not just present when I was elected; I "was notified and then I came; when I was notified I "came.

"Q. Have you attended all or any of the Board "meetings since?

"A. Since I belonged to it I have attended them.

"Q. What are the duties of the Board of Elders?

"A. *To be obedient.*

"Q. What are your duties as a member of that "Board?

"A. *Also obedience.*

"Q. What do you do, as a member of the Board "of Elders, from day to day?

"A. I do my work as I always did, and all the "work I can do.

"Q. What work do you do?

"A. *With my hands and feet, a shovel and with "a fork.*

"Q. Who owns the land down here. Who owns "the town?

"A. It is the property of the community, and all "belongs together.

"Q. Has it been sold since you became a member "of the Board of Elders?

"A. I don't know of anything being sold, but "something that has been turned over, or transferred.

"Q. Do you mean a mortgage?

"A. *I am not so highly studied as to know what "a mortgage is.*

"Q. What do you mean by transferred? Do you "mean a transfer of the property to raise money?

"A. *I don't know what was going on here.*

"Q. What did you mean by a transfer?

"A. Mr. Duss explained it to me, so I understood "at that time.

"Q. What did you understand at that time?

"A. He said that they had taken in two men to "make that transfer, and he should just tell him what "he had said—and what they wouldn't know rightly he "should just tell him.

"Q. What do you mean by 'him'—Mr. Duss?

"A. Mr. Duss.

"Q. Was there anybody with Mr. Duss?

"A. I think there were two attorneys or lawyers "with him.

"Q. Who were they?

"Q. Who were the attorneys with Mr. Duss?

"A. I don't know.

"Q. At what date was that, can you recall?

"A. I don't know it any more.

"Q. How long ago?

"A. I think it was about a year ago.

"*Cross Examination by Mr. Watson:*

"Q. You attended the meetings of the Board of "Elders?"

"A. At that time they were all together.

"Q. Since you were elected a member of the "Board of Elders, have you attended their different "meetings?

"A. Yes; as much as I know.

"Q. How often do they meet—have they met "since?

"A. Each week on Monday evening they come "together.

"Q. And when they come together, what do "they do?

"A. Mr. Duss then bring up what goes on inside, "from the outside; we don't know anything.

"Q. Does the Board of Elders discuss or talk "about the different matters inside of the society?

"A. Yes, sir."

Let us recall to your attention, these provisions of the Constitution of 1847:

> "Article 2nd. We hereby ordain and establish a "Board of Elders, *which shall consist of nine members* "of the Harmony Society and their successors, to be "chosen as hereinafter provided: * * shall "be the first Board."
>
> "Article 3rd. The Board of Elders shall have "and exercise the following powers, to wit:"

Here follow control of internal affairs, appointment and removal of Superintendents, to make regulations and give orders.

> "*and generally to take care that the members perform* "*the duties assigned to them.*"

To determine disputes, admit new members; to remove Elders and Trustees, to fill all vacancies.

It is also provided that the concurrence of six members of the Board should be deemed the act of the Board, and a legal exercise of their powers.

A governing body on the one part, and people to be governed on the other part, are radically necessary under these articles to constitute the Harmony Society.

Yet no member remains to be governed; the entire membership is absorbed into the eldership. All of the Elders are women, except Duss and Gilman—and Gilman is an imbecile.

Is then, this *shell*, this shadow—this ghost to be accepted as the solid substance of the Harmony Society, as contemplated and demanded by the Constitution? Break this shell and there will be discovered, Duss alone, posing as the concentrated essence of the principles and purposes of the Society.

The Harmony Society presents itself to-day as a name —*vox et preterea nihil.*

CELIBACY.

There is no pretence of celibacy. Duss and his wife live together at the Great House.

Seiber, a junior Trustee lived there as a married man, (919): Reithmuller lived there as a married man. Duss claims that Rapp was married; yet it is true that Rapp's wife never lived at Economy. Judge Grier finds as a fact that Celibacy is a cardinal principle.

Christian Fellowship.

There is absolutely no fellowship of any kind. They fought like cats and dogs. Feucht was hounded; charges of adultery and drunkenness were freely made; Duss himself was charged with adultery and permitted the woman in the case to live in his house afterward. Every effort of Duss was directed to *break up fellowship* and get people *out* of the Society, instead of preserving good and Christian fellowship within. The testimony relating to the purchase of the interests of seventeen members hereafter referred to, effectually dispel any illusion which may exist as to the maintenance of Christian fellowship.

No Power of Formal Dissolution.

The most careful scruntiny of the articles, constitutions or agreements of the Harmony Society, will fail to

disclose any power in the membership, or in the Trustees as Trustee, or as officers, or in the Board of Elders, to voluntarily, formally dissolve the Harmony Society. The members are mere recipients during life, of certain provisions for their support and maintenance; they have no voting power, no right to demand an accounting; no voice in the dispositions of the income, or control over the same in any manner, nor in the selection of Elders or Trustees. As compared with the perpetual life of the Society as contemplated, the members are transients only; the death of a member has no effect upon the Society in any manner. They, then, have no power to dissolve the Society of their own motion.

The Trustees so far as they hold the property in trust, have no power given them to terminate the life of the Society.

Neither are the Board of Elders or the Board of Trustees, as managers, superintendents, or general agents, vested with any power of dissolution. Their powers are expressly restricted to the preservation, management and control of a *living* Society; they *maintain*, they have no granted power or right to *destroy*.

The position of the Master that a dissolution mus be by consent of *all* the members, or by an abandoment of principles by *all* the members, is not sound, because it concedes a power not granted to them; and because it concedes a title to the trust property in them, in violation of the trust created for the society.

The trusts are expressly limited to "the benefit and use" of the *society*, and not of its members.

Dissolution of the society is, therefore, something

which may be *encountered*. The state of facts which have terminated the life of the society may have been the result of wrongful acts of the Patriarchy, or even of the members; a perversion of the property, the impairment of the joint and indivisible stock, the willful permission of immoral conduct, surrender of the prescribed form of government, absolute inability to accomplish the purposes and principles for which the society was founded, and of many other conditions of affairs.

When the *facts* which have caused this dissolution, do occur, there remain then only liquidation and distribution of the property. But neither the Trustees nor the Board of Elders are given any power of liquidation or distribution. If they do so act, it is not because they are acting in the pursuance of the duties of their office as prescribed by the articles, but they do so as *Trustees in their own wrong*. Their sole duty, then, is to seek judicial authority, especially because the rights of *all* interested in the joint and indivisible stock *vested* at the moment of dissolution.

Our position we respectfully submit, is unassailable, if it be conceded, as it has been by the court below, that the grants in trust do not create a joint tenancy with right of survivorship in the members, as members. Because when the society dies, it no longer can support the trusts, and the property must revert by way of resulting trust to those who are equally interested in the "joint and indivisible stock," which is the corpus of the trust, those who are living, and the heirs and legal representatives of those who are dead. And they not *as* members, but having been and being members, they were the donors of the property to the trust.

Not merely is the position of the Master unwarranted

by the articles of the society, but it might result in John S. Duss, as sole survivor, wandering on the face of the earth, in two capacities, one as an unincorporated association—the sole beneficiary of a trust, of which he is the sole Trustee; and the other as an ordinary individual citizen. As a society, *he* does not die; his trust property cannot be taken to pay his individual debts. According to the Master, the law would be quite unable to mix Duss as a *society*, with Duss as an *individual*, because, he reasons, the society is legal, the trusts created violate no law, and nobody can say that the society is dissolved, unless all the members *consent*. And Duss may not consent!

Is it possible that the Master can be sustained in his other position, that there is no dissolution for abandonment of principles unless *all* have abandoned these principles? If so, the Board of Elders and the Trustees may convert the town into a free love society, and permit conduct violative of all decency and sobriety, diametrically opposed to every principle and purpose recognized by the articles, and still survive as a society, if all have not participated in the abandonment, no matter how small the minority may be.

The society is a "shadow, not a substantial thing!" Utterly bereft of virility, with no membership; absolutely incapable of performing any of the obligations of a Patriarchal communistic society, is it to be said that the mere garment which garbs the skeleton is the society of the constitation, the beneficiary of the trust, because of its own motion the skeleton has not discarded its robes?

Having shown that the articles constituting the

constitutions of the Harmony Society do not vest in the members as members, or the board of trustees, or in the board of elders, or in the combination of all, the power voluntarily to formally dissolve the association, can there by any question of the power of jurisdiction of a court of equity to ascertain whether acts have been committed or whether acts have been permitted which in point of fact are contrary to the purposes and principles of the society and which necessarily, therefore, create a condition of dissolution.

It is unnecessary for us to quote authorities to establish the jurisdiction of this Court over an unincorporated association. It is conceded by the Master and is conceded by the Court below; the power of course is as extensive as in cases of partnership.

The general principal as laid down by Bacon on Beneficial Association and Life Insurance, in sections 57, 38a and 39, that a court will determine that when the purposes of a voluntary association fail, or cannot be carried out in accordance with its articles of association or constitutions; or whenever the objects of a society are impracticable, or its organization is in the nature of a fraud, the association will be declared dissolved; and further that the question of dissolution is a matter of fact for the determination of the court, as are also the questions of what are the purposes and objects of the society.

Therefore, the questions before this court for decision are whether or not the principles and purposes of the society have been abandoned, as laid down in its articles of association; or whether or not the society has become disabled by acts done or permitted to be done from conserving

those principles herein before set forth and fully argued in this brief; and if it is so decided, then there remains the duty of distribution of its assets among those who are entitled.

WHY THE HARMONY SOCIETY IS DISSOLVED.

The conduct and management of the society has entirely departed from the scope of power, and the purposes prescribed by the articles of 1847.

The then Trustees from 1859 began to form partnerships with outside industrial and banking companies. Instead of continuing a communistic society, it became a capitalistic association; instead of seeking investments for its surplus funds in trust investments, the Trustees became partners in file works, saw works, glass works, a banking company, brick works, saw mills and like matters.

Who, then, *were* the partners in these enterprises? Were they all the members? Certainly not. Were the Trustees partners? If so, why did they use the trust funds in their hands as their capital? It was not the *society* as a society which was the partner, for it had no legal entity which would permit it to form a partnership with others. It seems absolutely inconsistent with the requirements of a communistic society—the very aim of which was to live from within by the labor of its own members, that the Harmony Society should join with outsiders in partnership enterprises, and be bound to obligations created by those outoutsiders, as well as to the outsiders themselves.

Nothing of these enterprises were known to the society. No minute book was ever kept. No accounting was ever made. No knowledge of the disastrous results of them was had until after the advent of John S. Duss, as Trustee, and then only as late as December 1, 1891, as he testifies.

The Master gives a list of these enterprises on pages 231, &c. The total losses amounted $1,500,000.

There is no pretence that these investments were within the *scope* of the power of the Trustees. The nearest approach to an excuse is the allegation that the Society from at least 1830, had been engaged in similar enterprises The facts do not support the Master. It is true as he recites (227) that in addition to farming the Society had Economy, silk factory, cotton factory, a woolen factory, a a distillery, saw mill, flour mill, vineyards, planing mills, carried on shoemaking, tailoring, weaving, tanning, coopering etc., etc. But all these were run by the labor of the members, and the products were such as were used and needed for the use of the members, and the surplus only was sold No wages were paid for labor; it was a self-supporting community. All this was clearly within the purposes of the Society. There was no partnership in them with outsiders How widely different from the outside partnerships we are now considering. The Society then became perverted into a mere trading association, and its aggregation of capital and its use in these outside operations, render it doubly offensive to the policy of the law.

Not a single outside partnership was entered into before 1859.

We respectively direct the attention of the Court to articles 3rd, 4th, 5th, and 6th, of the agreement of 1847

[pages 62, 63, 64 and 65, Vol. 1] for the full text of the powers confided to the Board of Elders and to the Board of Trustees. It is manifest therefrom that neither had any authority or justification to engage either themselves as Trustees for the Society or the members in outside partnerships.

ACTS OF LIQUIDATION.

According to John S. Duss he began to get an understanding of the financial straits of the Society about the 1st of December 1891. He was then the Junior Trustee. Father Hemici was about 87 years of age, very feeble in health, and he died on the 25th of Dec. 1892. Thereupon Duss became Senior Trustee. He had succeeded not merely in the management, but he became morethroughly, the technical trustee of the properties of the Trust. His powers, rights and duties were defined by these very articles of 1847, to which we again refer the Court.

What, then was his duty, when he was confronted with this frightful loss, which apparently demanded immediate payment, and left the Society in an insolvent condition?

His duty as Trustee plainly was to disavow these unauthorized and unlawful investments, and to refuse recognition of any liablity of the Society therefor. As a Trustee, he was bound to *protect* his trusts; he was not permitted to swerve from that duty by any personal sentiment whatever.

He did not disavow and repudiate them, but on the contrary recognized them and started upon the financial procedures to pay the liabilities.

In so doing, he depleted the capital of his trust — the "Joint and indivisible Stock", and in so doing, he acted as a liquidator, and not as a Trustee. He put the Society *into liquidation*: Whenever an Association, or a Corporation is unable to meet its indebtedness out of its income, and has recourse to its capital, it is insolvent at least *pro tanto*, and the act of conversion of capital into debt paying is Liquidation.

The condition of affairs demanded an official liquidator: 1st to ascertain the validity of the alleged indebtedness, 2nd to make provision for payment, 3rd to dispose of the surplus.

What greater right had Duss as Trustee to honor these liabilities, than the prior Trustees had to create them? To what line or sentence in the Articles of 1847, or in any other can counsel point which authorized Duss to deplete the trust funds, or to act as liquidator, or to recognize unlawful acts of his predecessors?

This disregard of his duties as Trustee, this usurpation of the duties of a liquidator, had put Duss into the position of disarming himself as a Trustee to *defend* his trusts, by his unauthorized acts of affirmation as a liquidator. He cannot sue himself.

Considering then the rights of the donors of the Trust funds, there remains no legal status for this Society, but that of dissolution.

The point we make is that Duss violated his trust in recognizing these losses as debts of the Society; that he betrayed his trust in taking trust funds to pay them; that in so doing he acted as liquidator, and the Society was then in liquidation.

The learned counsel for the defendants in the course of the trial flung into the case scores of pages of accounts to show the *manner* of the liquidation, and the financial success of Duss as a liquidator.

The Master devotes many pages of his report to a reproduction of these accounts. This line of evidence simply befogs the issue. It is immaterial to this issue whether Duss performed his duties as liquidator well or ill; or that he raised this money in one way or in another way, or that he dealt with such and such securities. Well or ill, he as trustee had no right to do it at all; as a trustee he had not the slightest right to recognize these liabilities as just debts of the Society.

We pause not now to consider any of the questionable proceedures of Duss, Hice and Reeves in conducting the bank as a live, going concern, with its doors wide open, inviting fresh deposits from day to day; of the false reports of the condition of the bank sworn to by the cashier, Reeves, and filed with the State; the monthly statements treating overdrafts and bad debts of many years standing as good credits against debts due depositors—all of which appears in the testimony of Reeves and Morrison in volume 2½; but pass to the proposition:

That the abstraction of the Trust funds by the Trustee Duss for the payment of these losses, depleted the joint and indivisible stock and infringed upon the Trust, and was a perversion of Trust funds for purposes other than those contemplated by the Trust, and therefore compels the general liquidation of the affairs of the society.

That the act of such payment was of itself an act of liquidation, consequent upon a dissolved condition of the Society.

PARTITIONS OF PROPERTY.

In pursuing his scheme to become vested by survivorship with all this vast property, Duss had to deal with two classes of members, viz:

Those whose ages and infirmities gave probable indication of speedy removal by death:

Those whose comparative youth and robustness of health affected materially his chances of surviving them:

In the former class are the present living persons:

Fredericka Muntz, aged 77 years.
Christina Roll, aged 77 years,
Barbara Boesch, aged 80 years,
Franz Gillman, aged 70 years,
Katrina Nagel, aged 58 years,
Caroline Molt, aged 54 years,
Mrs. Hermamrdurfer, aged 47 years.

Some of these may be dead already the record does not disclose it:

They can be maintained at very slight expense for the remainder of their lives.

Those composing the second class were to be got rid of by purchase. Accordingly a form of conveyance was prepared, which was used substantially in every case of purchase, except in the case of Hugo Miller, and negotiations were entered upon.

These deeds are printed in volume 2 of the Record p. 951 et seq. and are numbered "exhibit No. 1" to 12½ inclusive.

These forms all contain the following:

"And in full knowledge of the fact that said society "owns in addition to the property at Economy and "Leetsdale, several thousand acres of land in Michigan "and in Warren, Pa.; also certain tracts of land in Al- "legheny County, Pa.; also stocks and bonds in various "rail-roads, mining, manufacturing and bridge compan- "ies, to *nominal amount of several hundred thousand dol- "lars*; also various judgements, mortgages and unsold "lots in Beaver Falls and New Brighton, of the nomi- "nal value of several hundred thousand dollars, also "that while it may be possible that the said society may "have a large amount of property after payment of its "debts, I am entirely satisfied to *accept as my full "share and interest therein* said [five thousand] dollars, "*and I will never hereafter make any claim for any "sum whatever, nor for the delivery of any other prop- "erty of said society to me no matter what may be the "value of the property and assetts of said society after "payment of its debts.*" * * * * *

Not merely this, but the deeds of the Feuchts and the Stickels—some eight signers—["Exhibit 10," p. 961; "Exhibit 12½," p. 965] fix the probable surplus after payment of debts as follows: "And that said society may have property worth *several hundred thousand dollars, left after the payment of its debts and liabilities.*

The master continually speaks of these transactions as *withdrawal of members.* He is certainly not justified therein by any proper construction of the terms of these deeds.

The transactions weae virtually a setting aside of the shares of each of the selling members in the entire property of the Trusts. Thus: The assetts are specifically mentioned viz:

Economy Lands.
Leetsdate Lands.

Michigan Lands.
Warren Co. Lands.
Allegheny Co. Lands.
Stocks, Bonds, Several hundred thousand dollars.
Judgments, Mortgages.
Unsold Lots, several hundred thousand dollars.

The equities of these after paying debts, may be, it is said, a large amount; in two the equity is fixed at several hundred thousand dollars.

Having thus before them the property in which they are interested, the selling members fix each the value of his own interest, generally $5000, and then each agrees to accept the sum named:

"*As my full share and interest therein.*"

Is there not here a clear and definite admission that all the members held all the trust properties in common; an agreement that each of the selling members should withdraw the value of his interest from the trust properties, upon an agreed valuation of that interest?

The value of these interests being paid out of the trust funds, the remaining properties represent only the shares of those members who remain—the remaining portion of the trust fund equals the shares of the remaining members, who elect, however, not to sever their interests then, but to continue to hold their shares in common.

These transactions, then, constitute a *dissolution* of the society, and a liquidation of the interests of all the members, subject to the payment of debts. Assuming there were then twenty-six members, each had one-twenty-sixth; seventeen severally estimated the value of his 1-26th at

$5000, which was forthwith alloted to him. The remaining nine have the rest of the property for their several 1-26th, and choose for the present not to sever their interests, but to continue those nine interests in common.

This liquidation was not the *individual* act of Duss, apparently, but the official acts of the Board of Elders. The transactions appear on the minutes [vol. 2-pp 623-4-5 6-627]

There can be no qnestion that these transactions were and were intended to be a winding up of the society. They were to be followed by a sale of the Economy lands, and in the month of September. Duss and Reithmuller offered these lands for sale by public advertisement. [Duss vol 2 p 597].

Duss treated the society as dissolved, and used for his own purposes money—which otherwise would have been covered by the trust, for a variety of personal purposes. On Dec. 20, 1894, he insured his life for his wife for $15,759 [613]: On Dec. 15, 1894—one for $30,000 payable to his estate: On August 24, 1894 for $20,000 payable to his legal representatives.

He also gave positions, residences, propinquity at Economy to some twenty of his own and his wife's relatives; he and his family and some of his relatives and connections have since his succession to the senior trusteeship occupied as his home the Great House, an imposing building surrounded by extensive gardens, built and for many years used, as the expression of the superiority of the patriarch, over the ordinary working members.

He has organized a brass band, composes musical pieces, gives public concerts, and on one occasion paid $600

of the society money in his hand to Gilmore, the famous leader, for the privilege of having his own music performed by Gilmore's band, he to lead the band therein at the Pittsburgh Exposition.

We make no criticism of his musical abilities, nor of his tastes or habits—inconsistent as they may seem with the seriousness contemplated by the articles of 1827, but we do say, that all that saves Duss from a wrongful use of trust money is the belief he entertained that the society was dissolved, that those who wanted their shares had got them in money and that the residue was the absolute property of himself and the eight others, who had not yet severed their interests, and continued to hold their purparts in common.

The Harmony Society is not a party defendant to this Bill. Individuals are: not one of them under the articles of the society can have, and in point does not have *individual* revenues. The funds of the trust have been freely drawn on for eminent counsel and the expenses of litigation.—payments which can be morally justified only on the hypothesis that they have acquired this estate in partition and that the society is dissolved.

John S. Duss in his answer (par. 29, p. 104) says he came in December, 1891, in respect to the financial conditions of the society to know that its reputed great wealth was a myth, *and such wealth as it did possess in its then condition was more than equalled by its enormous load of indebtedness.*

He further says (p. 93) that in pursuance of the provisions of the articles of government, wherein it is provided

that the Trustees shall have and exercise the right to make donations to seceding members as they may deem prudent, "we did *donate* and pay Hugo Miller $5,000; Samuel Siber $1,000; Jacob Niclaus $5,000; Blasius Platz $5,000, and Morris J. Frederich $5,000."

He further says (pp. 95-96) that in the exercise of the rights of trustees to make *donations* he paid to the Feucht family $28,000 in cash, $15,150 in lumber and land. He similarly dealt with the Steckels, with Stievater, Mrs. Hoer and her son

This pretense of a "*donation*" is absurd. A donation is a free gift; the transactions now referred to were purchases for large resulting considerations.

An example of "donation" is Exhibits Nos. 8 and 9, (vol. 2 p. 960-961) Lena Fritch having on Feb. 14, 1890, resigned her membership, received $95" to pay my traveling expenses and such like." [Exhibit No. 8.] Father Henrici and Duss (Exhibit 9) also lent her $24 to go to Germany, which she is to return in case her circumstances make it possible.

At this time, October 23, 1890, Duss had no knowledge that the financial condition was bad—he fixes that date Dec. 1, 1891—and yet with all possible indicia of great wealth all around him, he fixes the *donation* at $95.

In 1893, when as he says and as he *swears* (104) he knew that the society's wealth was a *myth*—that its wealth was more than equalled by its debts—he buys the interests of these 17 persons at an aggregate of over $85,000, borrows the money on mortgage (414) and swears that the transactions were "donations."

Another instance of "donations were the gifts of $100 and $1,000 to Dr. Cyrus Teed, of Koorasha fame. (See Duss testimony p. 630, vol. 2.)

These selling members were admitted to membership and made their sales as follows, viz:

	Date of Admission.	Date of Sale.
Benj. Fecht Henry and 3 ladies of that family,	Feb. 13, 1890	May 16, 1893
Steckle, wife and Miss Geratch,	Feb. 13, 1890	March 29, 1893
Hugo Miller,	Feb. 13, 1890	March 8, 1892
Blasuis Platz,	Feb. 13, 1890	June 9, 1893
S. Stievater,	Feb. 13, 1890	May 17, 1893
E. Kellerman,	Feb. 13, 1890	Dead.
Conrad Hermansdoerfer,	Feb. 13, 1890	Dead.
Mrs. Hermansdoerfer.	Feb. 13, 1890	
G. Riethmueller,	———, 1892	Dead.
Samuel Siber,	———, 1892	July 6, 1893
Mrs. Siber,	———, 1892	June 29, 1893
Leonard Hoehr,	Mar. 14, 1893	June 23, 1893
Mrs. C. Hoehr,	———, 1892	June 23, 1893
Jacob Niclaus,	Jan. 20, 1890	May 5, 1893
M. Fredericks,	———, 1889	June 5, 1893

These alleged "*donations*" were made to sixteen persons admitted as late as February, 1890. One person admitted February 15, 1893, was "*donated*" out within three months.

Is Duss a credible witness? Then consider Duss' own testimony (930) about Nicklaus' retirement. Nicklaus thought if the old people had allowed matters to get so dilapidated, it was their own fault. "*That we could raise money on the property that could give us $5,000 apiece if*

we could not do anything else. I objected to this, still he insisted on leaving."

He also says that Nicklaus made this statement the evening he gave Nicklaus his check—or the evening before.

Nicklaus had been to see an attorney.

The Feuchts money was in settlement of their Beaver County suit (935).

Siber's wife had run off with the butcher; others were drunkards, more or less occasionally; others turbulent.

The reasons given by Duss for these "donations" are given vol. 2, p. 849–858; also pp. 927–932.

Duss also swears (411) the basis for these "*donations*" was the *demand of the donee.* Platz, Miller, Fredericks Nicklaus and Siber were all members ot the Board of Elders when they sold out (Duss 396).

They were succeeded by women (396.)

Can any one believe Duss when he swears these payments were "donations?" And if his testimony be discredited in this vital matter, what reliance can be placed on anything he has said.

The truth is that he was determined to get rid of every person of any vigor of body or mind. He made alarming statements of threatened insolvency. He closed the deals at the best figures he could get. And it was with the intention to accomplish what he did accomplish—to set apart to those he wanted out, their several shares in money of the wealth of the society; the residue he held undivided to await the aid and co-operation of death.

If these were in fact "donations," each would have been dealt with as the case arose. But Duss prepared himself in

advance for all. He swears, (vol. 2, p. 426) speaking of these deeds:

"Q. They were all drawn then from a general "form?

"A. Yes; we changed it a trifle, as our circum- "stances were changed."

The earliest use of this *general form* was on the Stickel settlement, March 29, 1893.

Why a *general* form, unless he had anticipated a *general* need for them? And how he could anticipate a *general* need for "donations," unless he had prearranged for their use? There was nothing in past usage of donations to warrant a general use, for in many years there had been but one donation to a retiring member, and that Lena Fritch.

XII

The Union Company.

Not only as we have clearly shown has the society, or Duss and the remaining members, abandoned every principle, law and regulation, which constituted the reason of the formation and existence of the society, and for the maintenance of which the financial system was derived and established, but they have turned over the society and its affairs to a corporation of the second class under the corporation laws of Pennsylvania, authorized to purchase and sell land.

The duties and the trusts imposed upon and accepted by the Board of Trustees and the Board of Elders, and defined by the articles of 1847, and a reference to them in this place will be appropriate.

In the preamble, it is narrated, that George Rapp had died (61) thus depriving the members of his christian fellowship and religious ministry, and his superintendence in their temporal affairs, and that therefore, it has become necessary to the good order and well being of the association that some plan should be agreed upon to regulate its future affairs, promote the general welfare and *preserve and maintain it upon its original basis.*

And therefore, the two Boards were constituted. The articles of 1827 (containing the exposition of principles) and the supplemental articles of 1836 are solemnly recognized, re-established and continued.

The machinery of the two Boards was devised solely to take George Rapp's place, for the purpose of preserving and maintaining the society upon its original basis, and the principles and purposes of the society as shown in the two agreements referred to, and the laws and regulations which Rapp by those articles had authority to enact and enforce.

The duties of the two Boards were of a *personal* nature, and could not be delegated.

Thus the Board of Elders had power to remove and appoint superintendents; to take care that members performed the duties assigned to them; to determine all disputes and misunderstandings; to advise; to reprove; to admit new members; to expel, to regulate, maintain and improve the morals of the society; to instruct; to appoint spiritual leaders; to remove members from the Board; vacate seats; remove

Trustees; to fill all vacancies in either Board; to choose successors.

The Board of Trustees were to deal, purchase, sue, contract, bargain, and generally to transact all external business.

And all the property is to be deemed common property of the society.

The Union Company was incorporated under the provisions of the XVI section of the Corporation Laws of Pennsylvania, approved the 29th of April, 1874 (Purdon 406) which provides for the incorporation of

"XVI. Associations for the purchase and sale of Real Estate, or for holding, leasing and selling real estate * *"

The capital of such companies is limited to $600,000. (Sec. 35); their Board of Directors and officers are elected by stockholders, and are accountable to the state, for taxes &c.; its stockholders are liable in certain contingencies for certain classes of debts; it may be dissolved by process of Court, and its affairs wound up by judicial decree. Its stock is always subordinated to its debts or losses in the prosecution of its business. The corporation has neither a soul of its own to save, nor has it corporate power to care for the souls of others. It has none of the powers confided by the articles of 1847 to the Board of Elders and the Board of Trustees. It is not within its power to feed, lodge, maintain and support, nor care for the religious welfare of the members of the Harmony Society.

The capital stock of this Company is $400,000. On April 12th, 1894, the trustees, Duss and Reithmuller conveyed to the Union Company all the lands of the society at Economy, at Beaver Falls, in Allegheny County; in short, all

its real estate everywhere, except land in Ohio, and a few lots at Beaver Falls valued at about $4,000 (Master 222; Duss p.)

This conveyance was made *subject* to *the assumption and payment of the two mortgage liens, one for $400,000 and one for $100,000*, previously placed on the property by Duss. All of the capital stock was given as consideration to the Trustees, viz: $400,000,

This company therefore purchased only an *equity of redemption, and in payment exhausted itself of every dollar of its authorized capital. It had not a share left for running expenses*, to pay interest on the mortgages, even to pay taxes on its land, or taxes to the Commonwealth, and was liable for lien indebtedness to the extent of $500,000. It was insolvent at its birth.

"A shareholder in a corporation has no distinct or individual title to the *monies* of a corporation; the shares represent a right to participate in profits only."

Bidwell vs. Railway Co., 114 Pa. 541.

The Supreme Court of Pennsylvania says, that *an equity* of *redemption is not property* for which capital stock may be issued.

Van Horn vs. Corcoran, 127 Pa. 255.

Hazlelt vs. Kemp, 160 Pa. 85.

The Trustees have divested themselves of titles in fee by which they controlled the *corpus* by sale to a corporation, receiving in return shares which give them no distinct title to the monies of a corporation, but gives them only the right to participate in profits which such corporation may make, if profits be made.

At any rate by these conveyances, the Trustees have divested themselves of every foot of their real estate; the members have not a roof over their heads. As Duss says they are tenants at will of the Union Company.

This transaction is not merely a direct act of liquidation; it is in flat defiance and violation of the trusts imposed upon these Trustees.

The articles ("Exhibit H" page 112) confesses the liquidation and assigns the insolvency of the society as its cause, as follows:

1st. This suit was threatened, to recover large sums of money alleged to be due to heirs of deceased members, which the paper declares they believe to be unfounded.

Of course, this is a confession of a fraudulent conveyance intended to defeat any recovery by such heirs, if they should be held entitled in such suit.

2nd. It had become necessary for the society to obtain money to pay its debts, either by borrowing and giving security, or by selling the lands of the society and thereby get cash for the payment of said indebtedness.

This concedes debts beyond the *income* of the society; the necessity for depleting its "joint and indivisible stock", and it also admits that the transaction was to be a transaction of *sale.*

3rd. That the lands can be better managed and made more available for collateral purposes; more satisfactory titles can be given if first conveyed to an incorporated company; and *also avoid inconvenience and trouble that may arise from time to time by change of trustees.*

4th. Therefore authority given to "forthwith *sell,*

transfer and convey to the *Union Company*, all its lands in Beaver and Allegheny Counties."

This sale comprises all its Pennsylvania lands.

Duss and Brooks assign other reasons in their testimony, viz:—to avoid an *escheat*—Brooks says as to the property of the society "*out of sight out of mind*", and therefore the transaction was a good one.

They pretend also that this corporation is a substitute for the Harmony Society; in short that the Harmony Society is now the Union Company. Whether so intended or not the sale of the Union Company tends to hinder, delay and defraud any creditor of the Harmony Society who may procure judgment against it.

Not an industry is carried on in Economy by the society since this sale, no matter what the master says. Every house, mill, shop, field, oil well and gas well is owned by the Union Company; and all are occupied, when occupied, and operated by tenants, be they at will or otherwise, and by lessees of the Union Company.

John S. Duss, as president of the Union Company, is in possession of the lands and tenements of the Company, conveyed to it by John S. Duss, trustee, in flat violation of his trust, and in liquidation of his debts and for other fraudulent purposes. As such president he doubtless receives a salary for services, which as trustee he could not lawfully exact. He has by this act absolutely blotted out the Board of Eiders, and deprived them of their right to the exclusive management of internal affairs of the society, and he has blotted out his own trusteeship, and he as president of a corporation for profit and a Board of Directors com-

posed almost exclusively of non-members of the society, have exclusive ownership and control of all the trust property.

Franz Gilman is the only male member of the society, besides Duss, and Gilman is an imbecile, so that the directory is necessarily composed of non-members, except as to Duss.

The Board of Trustees have no power of liquidation conferred upon them by the articles of 1847. The power of liquidation—the conversion of trust property for paying debts is never implied as existing in a trustee, or a Board of Directors. When a company can no longer pay its debts as they mature, the company is insolvent; the directors cease to be directors, and hold the assets in a new relation, until the process of law is put into operation. The Board of Trustees are entrusted to manage and preserve the corpus of the property of the company, to sell, to buy, but not to deplete the property in their character of trustees. If their operations prove disastrous, their powers as trustees cease and they bear a new relation—and that only to put into operation an official process of liquidation.

It will be contended that in as much as the articles of 1847 give power to the Trustees to sell all or any part of the property of the company, they had the power to sell all the property to the Union Company.

In this there is error. All the property granted by those articles were for a "going" concern, and for the purpose of keeping it going; to carry into successful results the principles of the society, and to maintain in existence and in the exercise of their functions the Board of Elders and the Board of Trustees. It is an astonishing proposition that the articles which create a system and prescribes pow-

ers to keep that system in successful operation may be construed to justify a *destruction* of that system, and a complete demolition of its two Boards, and of the duties imposed upon them.

Besides, a power of sale, no matter how large, will never be construed to include the sale of all the property necessary for existence, and a conversion into an entirely hostile and distinct enterprise.

The law bearing upon this question is the same law applicable to Boards of Directors of corporations.

Morriwetz on Private Corporations (Sec. 239) says:

> "A Board of Directors have no implied authority "to make a material and permanent alteration of the "*business or constitution* of a corporation, even though "the alteration be within the Company's chartered "powers."

And (Sec. 240) that the Directors of a corporation have no implied *authority to wind up the company*, or to sell any property which is necessary to carry on its business.

The Trustees have not the power or authority to *change the business, the mode of government, or the machinery already adopted* to maintain and carry out the principles of the society; and in so doing they have destroyed the society, and terminated its existence.

It is also contended that every living member of the society signed "Exhibit H," dated April 11th, 1894, authorizing this sale to the Union Company, and that in so doing they made lawful the transaction of sale to the Union Company, and *that being the sole surviving members they had full power so to do.*

This contention necessarily assumes:

1st. That the constitutions of the society provided for a joint tenancy with a right of survivorship; or

2nd. That if there was no survivorship provided by the constitutions, the society itself remaining a society in April 11th, 1894, had a right to so deplete the property, or change its character, and destroy its system, and to substitute foreign and alien modes, motives and systems, so that when the society really died, the changed conditions of property would be substituted in distribution among all those entitled, next of kin of members dying in the society since 1836, included.

As to the first assumption that the surviving members of 1894 could do what they pleased as sole owners by survivorship, we can add nothing to what we have heretofore presented, viz: That none of the articles contemplated the *death of the society* in any form, or made any provision for tontine;—and that neither can be presumed in the absence of express provision; and that, therefore, there is no survivorship or tontine. If I am correct in this the first assumption falls.

As to the second assumption, that independently of right by survivorship, the society still existed *as a society*, and that during its existence, it has power to fundamentally change the purposes and systems, and to convert the property of a society founded for *distinctly expressed purposes into stockholders* of a real estate corporation, the best answer I can make is to state it.

In this view, the membership are as much bound to maintain the principles, preserve the property, and be governed by the systems of 1847 as the trustees are. They

cannot validly authorize the trustees to violate their trust; for all the rights of the living members are comprised in *enjoyment and use*, and in the preservation of the corpus for distribution among those the law directs, when the time for distribution comes.

The members under the articles of 1847 had no right to *change* anything. Nothing was reserved to them. They had no power to vote, no power to change the Boards, to enlarge, to reduce their powers, to authorize them to do this, or forbid them to do that other. The Board of Elders was *self perpetuating*, and the Board of Trustees was dependent for life on the Board of Elders. The members were only poor devils, mere serfs, to work cheerfully with their hands as the Boards directed. And in signing the articles of 1847, they forever obliterated themselves from any semblance of right or power to change Trustees or Elders, to authorize the Trustees to do or not to do; to enlarge powers; to reduce powers; to ratify. And the agreement of 1894 is to be read as though it was the resolution of the Board of Elders or Trustees, and is affected with the same vice—a vital lack of power to modify, change or alter, the articles of 1847, or to enlarge, reduce or destroy the trusts therein provided for.

The appellees must therefore absolutely depend on the articles of 1847 for the power of the Trustees to sell these lands to the Union Company. When we look at these articles or any preceding articles, to find what rights or powers the members as such have reserved to themselves, we will find nothing. They are emasculated; they have deprived themselves of every vestige of power or authority or right except to *labor and labor cheerfully and to obey cheerfully, and to*

waive wages, and accept only board. lodging and clothing, care in sickness, &c.

Such powers cannot exist in the members as such, without destroying the articles, and establishing some other system which perhaps ought to be, but is not.

In short the system is an abhorrent one—a system of slavery intolerable in a free land, and should be mercilessly condemned.

But there these articles are, and it is impossible to import into them any authority in the Members as such, to give different direction to the powers of the Trustees, from that provided by the articles of 1847, unless the appellees can succeed in convincing the Court, that the constitutions provide for a joint tenancy with right of survivorship, or tontineism in the members.

If it be seriously contended that death of a member in the Society leaves no descendible interest to his heirs or next of kin in the property of the Society, the interest of each member therein is reduced to a life tenure only. When one dies he simply steps out, and the remaining members continue such life interests until they die.

And then, that being the case, a life tenant, or one whose interest in the property is but for life, cannot by *his act* interfere with the disposition of the fee held by Trustees for the Society as a whole. And hence all the members signing the articles of 1894, having only *life enjoyment* cannot by a *united act* control the uses, dispositions and purposes covered by the Trusts, so as to direct them from the conditions imposed upon them; especially to the prejudice of those who have legal rights in distribution protected by the agreements of 1836, and the trusts of 1847.

The Master contends that the transaction of sale to the Union Company, was not entered into with intent to liquidate or to dissolve the Society thereby, and as the members and Trustee did not *form an* intention to dissolve thereby, the Society is not dissolved, notwithstanding that sale.

The question of intention has nothing to do with the condition; an actual dissolution is a necessary consequence of acts done, and cannot be defeated because the actor did not intend that consequence.

A man is presumed to intend the natural consequences of his act; those natural consequences prove the intent.

The Master certainly can find nothing in "Exhibit H" —(the articles of 1894)—to support his conclusion that there was no intent to dissolve. The fact that the Trustees resorted to the *members* for an authority, shows an intent to resort to the original elements consistent only with a radical change destructive of the Society. Then the confession of insolvency contained therein also. And these articles of the 11th of April, 1894, are immediately followed by a deed dated April 12th, 1894, to the Union Company—the day after.

The Company had been already organized; the deeds had already been prepared, and the very next day the corporation stepped in, and the Board of Elders and the Board of Trustees stepped down and out.

The Union Company is the practical liquidator of the affairs Harmony Society to-day.

We give a summary of "Exhibit H" (vol. 1 p. 112), dated April 11, 1894:

It recites a large indebtedness, payment of part of which may be called at any day; that this suit is threatened; and therefore it becomes necessary in order to obtain money to pay debts, "either to borrow money and give security," or sell the lands of the Society, *and thereby obtain cash for the payment of said indebtedness;* that the lands can be better managed and made more available as collateral and more satisfactory titles given, if first conveyed to an incorporated company, to *be thereafter managed, sold, disposed of, by and in the name of such company.*

> "And also avoiding thereby inconvenience and "trouble that may arise from time to time by change "of Trustees by death or otherwise."

Therefore sale authorized to the Union Company of

> "All lands now owned and held by said Trustees "for the benefit of the said Society to the end that all "said lands, tenements and hereditaments may be "owned, held and managed by said incorporated com- "pany, and be sold and otherwise disposed of from "time to time in pursuance of proper corporate action "as *may be determined by the directors and officers of* "*said incorporated company.*"

The capital stock of said incorporated company, however, to be owned and held by the Trustees in accordance with the articles of association to the amount of $397,500 out of a total capital of $400,000.

What else can this be but liquidation following insolvency and death.

The existence of a large debt; the necessity of raising money; the sale "to obtain cash for the payment of the same"; and finally turn the entire trust estate over to a corporation. Not for cash to pay the indebtedness, but to be

held, sold and managed by the Directors and officers "of the incorporated company."

The trustees get certificates of stock, which may or may not be dividend paying. The profits, the money, the corpus belong to the incorporated company, not to the *Trustees*. The latter have deposed themselves, and have delegated their trust to the officers and Directors of the incorporated company. every one of whom, except Duss, is a stranger to the Society.

The trust fund is burdened with state dues and taxes; the corporation is subject to State control, and over and above all the corporation has no corporate right to act as manager or Trustee for any other persons.

In the most optimistic way this transaction can be considered, how are the members of the society to be housed, fed, clothed, and nourished in sickness and age, out of dividends on stock not earned nor declared.

Duss Trustee, is Duss President of the corporation; he at least is strictly in it.

The property conveyed to the Union company is worth at the very lowest figure $1,000 per acre. There are at least 3,000 acres. The consideration given to the Trustees is $395,000. Who is to control the enormous profit of the corporation—who but Duss? Where comes in the control of the Board of Elders? And who are the Elders, except one imbecile man, and an ignorant, incompetent non-English speaking old German peasant women.

The preamble reciting the indebtedness and the necessity for raising cash is a mere blind, a pretense, and is not founded on fact. This paper H was signed April 11, 1894.

The Master finds that $1,002,731.62—every dollar of the liability to the bank, had been paid off Jan. 1, 1894, four months before the date of this "Exhibit H." (M. R. 250). The Trustees got not one dollar or cent from the Union Company. On the contrary the Master finds that the Trustees actually loaned to the Union Company $119,740.43 (M. R. 251.)

And where would the Union Company get any money to pay the Trustees? All its capital was exhausted to the Trustee Duss—and therefore had no means left. The very money loaned by Duss, $119,000, was applied to paying the second mortgage and $50,000 on the first mortgage (M. R. 251.) These mortgages were assumed by the Union Company as its own debt without a dollar in its treasury to meet them. Of the first mortgage $350,000 remains unpaid—a first lien, and the title to all the equity rests in the Union Company.

Mr. Brooks testifies that he advised the Union Company scheme, among other things to "remove the property "in a sense out of sight and out of mind so far as the question of *escheat* was concerned." (Vol. 2, p, 645.) How could there be a question of *escheat* unless the Society was dead?

He further says;

"It was organized on my recommendation for the "purpose of putting the property of the Society in "what I deemed to be a safer condition so far as the "title was concerned, and to facilitate the sales of prop-"erty from time to time when we shall get ready to be-"gin to sell."

The Master seems to hold that the Union Company is the Harmony Society. How can this be within the charter of the Union Company?

If he be right, then the Harmony Society cannot be living. The duties of the Board of Elders and the Trustees have vested in an extraneous corporate Board of Directors. That Board consists of five persons. The quorum of the Board of Elders is six. The discretion and power of dealing with the property of the Trust has passed from the Trustees of the Society to the Board of Directors. What contract has, or what contract can the Union Company assume to support and maintain the members, or to fulfill the obligations imposed upon the Board of Elders and Board of Trustees?

We submit with confidence these propositions:

That the transaction of sale to the Union Company was in violation of the Trusts, was an abandonment of the purposes of the Society, and an act of liquidation consequent upon an actual dissolution. The assent of members in paper "H" was an express acknowledgement of dissolution.

That if the Union Company be the Harmony Society in another name the form of government provided by the act of 1847 is destroyed; the Union Company in so acting is also acting *ultra vires*.

That if the Master be right in so regarding the status of the Union Company, and Mr. Brooks' statements of the purposes of the transactions be accepted, then the Trustees have made a voluntary assignment to the Union Company, and the Union Company is the voluntary assignee to convert the property of the Society by sales, to pay the mortgage debts, furnish money for payment of other debts, and to account to the Trustees for the surplus remaining. The

testimony shows that no rents are charged by the Union Company to the Trustees, the latter being as Duss terms it, tenants at will. And the Union Company gave the Trustees leases of all the Economy lands &c. from April 1894 to April 1895 without rent, the Trustees to pay the taxes (Vol. 2 p. 410.)

And the assignment is made to a Company with no power to so act. The transaction however is a recognition of the failure of the Trusts and of the Society, and is the declaration of an abandonment of the purposes and principles of the Association.

XIII.

The Reference and the Report.

The counsel for the parties in this cause to avoid the constant reference of disputed questions arising on objections to testimony to the Court, entered into a written agreement for the appointment of a Master.

In the report the Master gives but a part of that agreement; viz: that which relates to his powers, and omits the remainder, which is as follows, viz:

"The parties reserving the right to be heard be-
"fore this Court on exceptions to such findings and re-
"serving the right of each to take appeals from the
"decree, decision and judgment of this Court therein
"to the proper appellate Court, with the same force

"and effect as though this cause had been decided by "the Court below without the intervention of a Master.

"It is distinctly understood that in the conduct of "this cause the Master will be governed by the decision "of Judge Acheson on certificate of examiner, opinion "filed October 15th, 1894, reserving to both parties the "full right of exception and appeal from such decision."

Unfortunately the inability of the few plaintiffs, in a pecuniary way, has compelled their counsel to omit from the record a great amount of testimony, and thus to withdraw from the attention of this court many allegations of our bill which we believe amply sustained by the evidence.

We feel also that as respects those matters, and as respects those now before this Court, we have not been dealt with with that degree of kindness which is consistent with just expectations.

As respects certain charges against Duss' moral character, not introduced as showing his personal unfitness, but as showing the abandonment of principles of the Society, we are placed in the position of his wilful traducers. Yet the fact is the act was sworn to in the fullest detail; the witness was recalled for further cross-examination by the defence and then recanted his testimony in chief. The defendant took no action as for perjury against this witness for his statement in chief, but the plaintiff caused his indictment for perjury for his statement of recantation. We offered to show by the record that this witness plead guilty of perjury in his recantation statement and was sentenced to imprisonment in the penitentiary for his crime.

That offer appears in Vol. 2, p. 937. It was rejected by the Master.

The Master finds a clear bill of health for Duss. It seems to us that in a matter addressed to the Chancellor as to the credibility of witnesses, this offer should have been admitted, if for nothing more than to relieve plaintiffs and their counsel from an apparently gratuitous scandal,

It will be apparent on reading the report that everything on the defendant's side had the go, and nothing prevailed on the plaintiff 's side.

The principul witnesses for the defence are Duss, whose vast interest at least suggest bias, Hice, Reeve and Mr. Brooke. Judge Hice had been the chief attorney and adviser of the Trustees for fifty years, was a partner with the Trustees in all their ruinous investments, and President of the Economy Bank. Reeve had been similarly interested in their enterprises, and was the Cashier of the Bank. Both Hice and Reeve had every motive to induce Duss to pay off the debts of the Bank, and to relieve themselves of the odium otherwise attaching, and to relieve themselves from liability as shareholders.

Every motive to indicate bias is to be found in these witnesses.

As to Duss the testimony discloses as does his answers, that he persisted in swearing that the purchase money he paid for the interest of seventeen members in the property of the Society were "donations" within the meaning of the articles of 1847,—in the very teeth of his statements of the deals themselves, the "dickerings" for price, and the phraseoligy of the agreement of sale.

The testimony disclosed, also, that Duss knew the terribly rotten condition of the Economy Bank, and the causes

of the rottenness, in 1891, yet kept the bank open until some time in 1893, receiving deposits as a going concern.

Judge Hice swears that he, as President, kept the bank open in these circumstances, and admits his knowledge of the Act of 1889, and his violation of it.

Reeve, the Cashier, admits swearing to false statements of the bank's condition rendered to the State department; and the evidence discloses false monthly statements submitted to father Henrici. These statements treated overdrafts and notes for dead debts of years standing as live assets to the amount of $1,000,000, so that some, if not all, of the statements were made to show a surplus of profit.

Yet the Master gives unlimited credence to everything these witnesses have testified to. Our many witnesses receive scant treatment, and Benjamin Feucht is openly charged with bias. And yet Feucht made not one charge against the morals prevailing in Economy, as manifested in individuals, which is not practically admitted by Duss. He also charged the Elders with refusing to put accused individuals on trial; Duss admits they were not put on trial, and excuses himself for purchasing the interests of accused persons, because they were guilty of the very offense complained of.

The Answers are four in number. Mr. Duss joined with all the defendants, and also filed a separate Answer. The Answers of defendant members and that of Mr. Duss includes in them what it was beyond their power to know, and therefore in the judgment of complainant's counsel, the

Answer should stand for naught in those respects. Hardly one of the defendants had been in the Society ten years, and two or three of the older ones were either bed ridden or so feeble as not to understand what occurred in the Society in the past few years.

An examination of the Paragraphs of the General Answer will disclose that the allegations therein made were such as counsel thought ought to be made. The separate Answer of Mr. Duss is open to the same objection, he joining the society in 1890. He could have had no knowledge which would have enabled him to speak effectively by way of Answer. The Master has, however, seen proper to give great effect to the Answers open to this objection. As the Answers are not responsive to the bill they should not be regarded as effective denials.

It will also appear on inspection that the Bill waived an Answer under oath, and yet notwithstanding the defendants have verified their Answer. That the Master treated such Answers as responsive, appears throughout his entire report, and in very many instances he bases his findings of fact upon the averments set up in these Answers. The two principal witnesses who had testified at length for the defendants in support of their Answer, particularly upon what constituted the principles of the Society, and the manner in which its affairs are conducted, are Henry Hice and J. T. Brooks, the paid counsel of Mr. Duss in this very case. Mr. Hice is the person who practically conducted the bank, file works and cutlery works, which operation "crippled and ruined" the bank, according to Mr. Brooks; Vide, page 644, Vol. 2 of Record; while Mr. Brooks, according to his testimony, virtually acted as a co-

trustee, discharging most of the employes of the Society, negotiating with and paying off the members as they retired, selling and disposing of practically all of the investment securities of the Society, without consulting with the Board of Elders or the members; putting large mortgages in behalf of his clients on the Society's property without telling the Society's members what he was doing, and finally organizing the Union Company in order to "put the property out of sight;" all of which will more fully appear by an examination of Brooks' testimony, especial reference being made to pages 645, 647, 652, 691 to 695, 698 to 700. Consequently the testimony of Messrs. Hice and Brooks, the accredited attorneys of Mr. Duss, should have been regarded as unusual under the circumstances and open to scrutiny; yet the Master gives absolute credit to every statement made by these witnesses, whether the same had been contradicted by plaintiff's witnesses, or was unsupported, or negatived by the circumstantial or collateral evidence in this case.

The Complainant's paragraph 19 of the Bill, upon which the *thirty-eighth* assignment of error was based, alleges as part of the plan of Mr. Duss and his colleagues to wind up the society was his settlement with about all the active members of the society, and accepting from them what in law must be regarded a deed of liquidation or partition. When brought face to face with such a charge, Mr. Duss attempts to meet the same by a series of explanations, which the Master adopts in his findings of fact. If the Court upon the examination of the evidence bearing on this subject is of the opinion that Mr. Duss' testimony is false or what is equivalent thereto, trifling and insincere, then

such a conclusion is of vital importance to the present complainant's case; first, it establishes a plan that necessarily could have been but one step in the scheme to liquidate: second, shows the danger of relying on any of the unsupported statements of Mr. Duss throughout the case, upon the principle that he who is persistently false on one line of material evidence is likely to be false in all that effects him; third, that if the Master is manifestly deceived by such testimony, it should weaken the Court's confidence in his discernment and judgment in the whole case. Therefore, in considering this aspect of the case, it is important to weigh the motives of the principal defendant. If his plan was to reduce the society down to himself, his wife, or even one or two others, that he or they jointly with them might have the entire usufruct of accumulations covering nearly one hundred years, and to which he had contributed nothing, then the immensity of the stake he sought must be considered in weighing his testimony, and in considering the testimony of those he brought forward to aid him in affecting such results. A man who will betray a trust and seek to become the beneficiary thereby, must be put in a class whose testimony is worse than doubtful, if such betrayal is proven or reasonable ground exits for believing it to be so. Therefore that we may not be considered as judging the man harshly or, attempting to prove a case by invectives or unfair insinuations, we most respectfully ask the Court to read in its entirety the evidence bearing on this branch of the case, all of which is printed in the present Record and is separately indexed in this brief. It is admitted on all sides that Mr. Duss is a bright, shrewd young man. Until 1890

he had led a life with considerable ups and downs in the East and West that more than likely gave him an experience in worldly matters which must be of considerable assistance in playing his present role. Circumstantial evidence at times is the most convincing of all, especially if the trend is continuously and uniformly all one way and only attempted to be met by the direct testimony of interested parties; but when such circumstantial evidence is supported by direct testimony it has added strength.

In the first place an examination of the reasons given by the Master for each member retiring will indicate apparently that *each retiring member testified in this case*, (*Vide*, page 294 to 296, Master's Report). But three out of the seventeen were called, two of these for the Complainants, who testified contrary to the Master's Findings.

The Master says in his Report, page 295, "Jacob Nicklaus was the next who wanted to withdraw. His reason was that," &c.

Mr. Nicklaus was not a witness.

The Master again says: "Stievater also wanted to withdraw. He complained, &c."

Mr. Stievater was not a witness.

The Master says, "Blasius Platz complained that he could not get along," &c. He was not a witness.

The Master says (page 296:) Of Christina Hoerer, "her complaint was that her sister," &c. Mrs. Hoerer was not a witness.

Of Elizabeth Sieber, the Master says, "Mrs. Sieber insisted on leaving. She complained," &c. She was not a witness in this case.

This Court, therefore, reading these findings by the Master would necessarily assume that the Master made his findings from what these people had said on the stand as witnesses, whereas the truth of the matter is that these findings were based wholly on a part of Mr. Duss' testimony, wherein the latter attempts to excuse or justify his payments.

To accept the explanations of the very man charged with sinister purposes as the truth, and then state these findings in such a way as to give the appellate Court the idea that they are based upon the testimony of the retiring members themselves is apt to be confusing.

When an examination of Mr. Duss' testimony is made, we think it will plainly appear that the excuses and explanations are worse than frivolous. He says Frederichs left because he did not drink; that Stie vater left because he drank too much; that Seiber left because he was too good a man to stand the story circulated about his wife, while Mrs. Sieber left because these lies were circulated about her (in passing it may be said she confounded her traducers by eloping with the village blacksmith.)

Duss says Stickel left because the Board of Elders did not like his interfering in the Feucht litigation, while the same Board of Elders left at the same time for equally strange reasons.

Mrs. Hoerer left because she could not get along with her sister in the Society, and Platz left because he and Sieber could not agree, and Sieber left for the reasons already above stated. Miller left because his German was too high-toned for the rest of the members, and so on *ad libitum.*

The Master in one part of his opinion says that all these members except Sieber left on account of the Feucht bill, but Mr. Duss' reasons and the other evidence do not bear out such a remarkable finding. As stated before the Master fails to include in his Report the paper signed by these retiring members, or comment thereupon.

The fact is that the evidence of the defendants utterly fails to properly account for the retirement of Fredericks, Bertha Geratch, Mrs. Stickel, Christina Hoerer, Leonard Hoerer, Hugo Miller, Rebecca, Margaret and Tirza Feucht; Dr. Benjamin Feucht, the Society's physician; Jacob Nicklaus and Samuel Sieber, for against these persons there is nothing that affects their character or their standing in the Society; but they composed practically all of the intelligent and younger members of the association; as for Julius Stickel and Henry Feucht their activity in attempting to correct abuses in the Society is all that rendered them objectionable to Mr. Duss; while B. Platz and Mrs. Sieber should both have been expelled instead of getting some ten thousand dollars.

Therefore when the Master finds that Mr. Duss "earnestly insisted" on all these members remaining except Stickel and Feucht, we have the picture of Mr. Duss holding firmly onto them with one hand, and in the other offering a fortune to these simple Germans ranging from five to ten thousand dollars in case they should retire—his right hand not knowing what his left hand did—while to induce them to remain he sets forth in his quit claim deed that the Society "may possibly have several hundred thousand dollars" above its indebtedness—per capita assets not more than equalling what he offered them in ready cash.

But just as the above picture shows Mr. Duss' extremity in now attempting to explain away his scheme of liquidation—so is the one where he attempts to convince this Court as to the reasons why no new members have been admitted since the Fall of 1892. The Master says the Feucht Bill prevented others joining. Think of it. A Society reduced to less than ten, with only one competent man left, and yet nevertheless Mr. Duss, Mr. Hice or Mr. Brooks who seems so successful in getting people to retire, can get no one to join with free rent, free living, free clothing, no interdiction on marriage, and an interest in over three millons of assets; and if they wish to retire under such pleasant surroundings then "donations" ranging from three thousand to ten thousand dollars in land or money could be obtained, however slight their period of service in the Society: Were invitations issued for applicants a line would form from the City of Pittsburgh to the town of Economy seeking admission, and out of these ranks we submit one ought to be able to select a few capable energetic Germans who could relieve Mr. Duss from the great worry and burden of the entire management of the external and internal affairs of the Society which he so frequently refers to in the present case. Doubtless some of his twenty relatives or connections living in Economy would be quite willing to help this hard worked Trustee out of his fearful difficulties. The fact is patent, of course, that Mr. Duss has no intention of taking in a single person, and thereby making him the individual owner of possibly three hundred thousand dollars in case this Court sustains the lower Court, thereby permitting Mr. Duss to legally retire in the future the rest of the members now remaining.

We give an index of Evidence on Retirement of members: Stickel 533 to 536; 538 to 541; 565 to 568; Fredericks, 589 to 593; Duss, 849 to 858; 871 to 873; 900 to 904; 927 to 939; also 375 to 379; 381 to 387; 425 to 428; 620 to 629; Brooks 646 to 652; 669 to 671; 678 to 689; 691 to 700.

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